

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Karen L. Bartlett

v.

Civil No. 08-cv-00358-JL

Mutual Pharmaceutical  
Company, Inc.

**SUMMARY ORDER**

Attached are the court's rulings on Mutual's objections to the deposition testimony of two of Bartlett's potential witnesses, Drs. Claes Dohlman and Nam Heui Kim, who have been deemed unavailable to testify at trial under Rule 32(a)(4) of the Federal Rules of Civil Procedure (see doc. 275).

**SO ORDERED.**

  
\_\_\_\_\_  
Joseph N. Laplante  
United States District Judge

Dated: August 10, 2010

cc: Keith M. Jensen, Esq.  
Bryan Ballew, Esq.  
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Witness\_ Claes Dohlman, M.D., Ph.D. -: 1:4 - 1:19

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

5  
6 CIVIL ACTION NO. 08-CV-358-JL

7 -----  
8 KAREN L. BARTLETT and  
9 GREGORY S. BARTLETT,  
10 Plaintiffs

11 v.  
12 MUTUAL PHARMACEUTICAL  
13 COMPANY, INC., and UNITED  
14 RESEARCH LABORATORIES, INC.,  
15 Defendants  
16 -----

17  
18 VIDEOTAPE DEPOSITION OF CLAES DOHLMAN,  
19 M.D., Ph.D., taken on behalf of the  
20 Plaintiffs, taken pursuant to the  
applicable provisions of the Federal Rules  
of Civil Procedure, before Carol A.  
Fierimonte, Certified Shorthand Reporter  
and Notary Public within and for the  
Commonwealth of Massachusetts, (#134693),  
at the Massachusetts Eye and Ear Infirmary,  
Howe Laboratory, 243 Charles Street,  
Boston, Massachusetts, on Thursday,  
September 10, 2009, commencing at 9:20 a.m.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 6:8 - 6:20

8 Q. Please state your name for the record.

9 A. Claes Dohlman.

10 Q. And are you a doctor?

11 A. Yes.

12 Q. Okay. As we sit here now, Doctor Dohlman,  
13 are we at both Harvard Medical School and  
14 the Massachusetts Eye and Ear Infirmary?

15 A. If I'm what?

16 Q. Yes, sir. As we sit here now, are we at  
17 both Harvard Medical School --

18 A. Yes, that is correct.

19 Q. -- as well as Mass. Eye and Ear Infirmary?

20 A. Correct.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 7:2 - 10:10

2 Q. Thank you, sir. Are you an

3 ophthalmologist, Doctor Dohlman?

4 A. Yes.

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5 Q. Are you an eye surgeon?  
6 A. Yes.  
7 Q. Are you a Harvard Medical School professor?  
8 A. Yes.  
9 Q. Do you hold any board certifications?  
10 A. Yes.  
11 Q. How many?  
12 A. In Ophthalmology only.  
13 Q. Okay. Are you licensed to practice  
14 medicine in one or more states?  
15 A. In Massachusetts, yes.  
16 Q. Thank you. Are you an -- is there an  
17 endowed chair or professorship here at  
18 Harvard in your name?  
19 A. Yes.  
20 Q. Is that endowed chair or professorship in  
21 your name designed to last in perpetuity,  
22 also known as forever, hopefully?  
23 A. That is correct. It's a hope.  
24 Q. Tell us about the endowed chair or  
25 professorship in your name here at Harvard,  
00008  
1 please, sir.  
2 A. Oh, when I retired as Chief here, the  
3 Former Dean Tosterson at Harvard announced  
4 that the chair in my name, the Chair in  
5 Ophthalmology in my name would be created.  
6 It took a number of years before the  
7 necessary funding could be accomplished and  
8 finalized, but now it is in place and the  
9 incumbent is Dr. Reisa Dana.  
10 Q. Okay. Are endowed chairs or professorships  
11 here at Harvard in part to pay honor to or  
12 to pay tribute to the medical contributions  
13 or work of those whom they're named after,  
14 sir?  
15 A. Yes, that is the principle.  
16 Q. Okay. And is there specific areas that the  
17 endowed professorship in your name here is  
18 supposed to be dedicated to, specific areas  
19 of eye surgery or ophthalmology?  
20 A. It is understood that the incumbent of the  
21 chair should be a person with a specialty,  
22 subspecialty in corneal diseases and,  
23 ideally, the Director of our Corneal  
24 Service here. And this is the case right  
25 now.  
00009  
1 Q. Okay. Have you also -- how long have you  
2 been an eye surgeon, Doctor Dohlman?  
3 A. How long?  
4 Q. Yes, sir.  
5 A. I graduated from the University of Lund  
6 with my M.D., 1950. And I was trained in  
7 Lund for a couple of years. I have my  
8 Ph.D. in biochemistry. And then in 1958, I  
9 was invited to come here for to do corneal  
10 work for three years.  
11 Q. Thank you, sir. In addition to your work  
12 as a surgeon, is it true that you've also  
13 published a great deal about eye surgery?  
14 A. That is correct.

Objection:  
-402  
-403  
-Cumulative

Ruling: Overruled. Some background information about the witness is relevant and not unfairly prejudicial.

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15 Q. Is it true that many of your publications  
 16 involve how, when, or why eye surgery  
 17 should be done?  
 18 A. Yes.  
 19 Q. Okay. And you just provided me a copy of  
 20 your Curriculum Vitae, which I'll place on  
 21 the screen here.  
 22 And is this Exhibit No. 128 a copy  
 23 of it, sir? Is this it?  
 24 A. Yes.  
 25 Q. Okay.  
 00010  
 1 A. Yes, it is.  
 2 Q. Thank you, sir. And I see that you've  
 3 published some 290 different publications  
 4 either as original research or as book  
 5 chapters or that you co-authored. Correct?  
 6 A. Correct.  
 7 Q. Okay. And your name would be in bold as  
 8 one of the co-authors of each of these 290  
 9 publications?  
 10 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 10:11 - 10:15

Is  
 12 the best way to sum up these 290  
 13 approximate publications is pertaining to  
 14 how, when, and why eye surgery should be  
 15 done?

Objection:  
 -402  
 -Alternatively 403

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 10:18 - 11:5

18 A. It is not all surgery.  
 19 Q. Okay.  
 20 A. It -- in the beginning it was biochemistry  
 21 of the cornea of the eye, and then more  
 22 physiology of the cornea of the eye, and  
 23 then, then more surgery, corneal  
 24 transplantation. And then for the last 20  
 25 years, particularly surgery pertaining to  
 00011  
 1 artificial corneas, which has been my  
 2 interest.  
 3 Q. What is your best estimate, sir, of how  
 4 many eye surgeries of any type you've done  
 5 in your career?

Objection:  
 -402  
 -Calls for  
 speculation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 11:8 - 11:12

8 A. Maybe 5,000.  
 9 Q. Okay. And what's your best estimate of  
 10 those approximate 5,000 eye surgeries have

Objection (11:9 to  
 11:12):  
 -402  
 -Calls for speculation

Ruling: Overruled.

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11 involved something called a  
12 keratoprosthesis?

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Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 11, Line 15

15 A. About 500.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 11:24 - 13:2

24 A. About, about 500.

25 Q. Thank you, sir.

00012

1 A. Keratoprosthesis, yes.

2 Q. Okay. Do you -- did you or do you have a  
3 patient named Karen Bartlett?

4 A. Yes.

5 Q. Okay. And were you the lead surgeon on a  
6 number of eye operations on Karen  
7 Bartlett's left eye?

8 A. Yes. I may have done, and I will have to  
9 check that, I think, three surgeries on her  
10 left eye.

11 Q. Okay. Have you reviewed the chart recently  
12 or -- this is not a memory test.

13 A. Yes, this morning.

14 Q. Okay. Thank you.

15 A. Yes.

16 Q. And of the approximate 500 surgeries you've  
17 done involving a keratoprosthesis, how many  
18 of those have involved something called the  
19 Boston or Dohlman Keratoprosthesis?

20 A. All.

21 Q. All. Okay.

22 A. Yes.

23 Q. And can we use the term "K-Pro" as short  
24 for keratoprosthesis?

25 A. Yes, correct.

00013

1 Q. Is that how you refer to it?

2 A. Yes.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 13:10 - 13:19

10 Q. Is a K-Pro, a Boston Dohlman K-Pro, is that  
11 a device that's used in an eye surgery?

12 A. Yes.

13 Q. Okay. Who is the principal pioneer or  
14 inventor of the medical device now known as  
15 the Boston K-Pro?

16 A. I was.

17 Q. Okay. Is that why in the literature you  
18 frequently see it referred to as the either  
19 the Boston or just the Dohlman K-Pro?

Objection:  
-402  
-611(c)  
-Assumes facts not in  
evidence  
-No foundation

Ruling: Sustained as to lines 13:17  
through 13:19. Otherwise overruled.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 13:22 - 14:25

22 A. Some people call it the Dohlman  
 23 Keratoprosthesis. But I did not like that,  
 24 so I invented the name Boston  
 25 Keratoprosthesis.  
 00014  
 1 Q. And why did --  
 2 A. And that --  
 3 Q. Thank you, sir. And why did you choose to,  
 4 for lack of a better word, donate, if you  
 5 will, instead of calling it the Dohlman  
 6 Keratoprosthesis, to the Boston K-Pro?  
 7 A. Well, in our circles it does not look good  
 8 if you put your own name on something and  
 9 --  
 10 Q. Okay.  
 11 A. And the more -- the lesser of that, the  
 12 better.  
 13 Q. Okay. And is there another type of eye  
 14 surgery called a keratoplasty?  
 15 A. Yes. That is standard corneal  
 16 transplantation.  
 17 Q. Okay. And is a standard corneal  
 18 transplantation also called a penetrating  
 19 keratoplasty?  
 20 A. Yes.  
 21 Q. Okay. A kerato -- is it correct to state  
 22 that your medical device in the surgery  
 23 called the Boston K-Pro involves both a  
 24 medical device as well as human tissue both  
 25 implanted in a person's eye?

Objection:  
 -402  
 -Improper opinion  
 testimony from non-  
 retained expert per FRCP  
 26(a)(2)

Ruling: Sustained as to lines 13:22 through  
 14:20. Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 15:3 - 15:11

3 A. Yes. That is the way we do it here. It is  
 4 not always absolutely necessary to use a  
 5 donor corneal graft as a carrier for the  
 6 plastic device.  
 7 Many times, especially in  
 8 developing countries where resources are  
 9 scarce, they often can use the patient's  
 10 own cornea and then implant the plastic  
 11 device and then suture it back.

Objection:  
 -Move to strike as non-  
 responsive after "Yes"

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 15:16 - 15:19

16 Q. Do you agree, sir, that all the testimony  
 17 you will provide today will be based upon a  
 18 reasonable degree of medical certainty or  
 19 probability?

Objection:  
 -402  
 -No foundation  
 -Speculation  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Overruled. Arguably called for  
 speculation when asked, but that problem was  
 "cured" when the witness reviewed and  
 approved the transcript.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 15:22 - 16:2

22 A. That, I hope. I will certainly do my best.  
23 Q. Thank you, sir. What is your best  
24 estimate, Doctor Dohlman, of how many  
25 patients you've treated or consulted or  
00016  
1 operated on in your career who had SJS or  
2 TEN at one time?

Objection (15:23 to  
16:2):  
-402  
-No foundation  
-Speculation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 16:5 - 17:3

5 A. I cannot say with certainty. I believe  
6 that -- I cannot say with certainty but it  
7 is probably in the range only of about 50.

8 Q. Okay.

9 A. And the reason for that is that the  
10 Stevens-Johnson are so difficult and, with  
11 standard corneal transplantation, virtually  
12 hopeless. And with keratoprosthesis, our  
13 keratoprosthesis, in the beginning the  
14 results were terrible. And they were so  
15 bad so that I had a self-declared  
16 moratorium in the sometime in the mid  
17 '90's. Then we improved a number of things  
18 and I started again. And now it's much  
19 better, but still it is our worst category.  
20 Maybe it will come to that, but this is our  
21 worst category. And we have now in a small  
22 series reached an outcome of about  
23 50-percent survival or reasonable vision  
24 after five years.

25 Q. And that small series you just referred to  
00017

1 was a 2008 publication that you were a  
2 co-author of?

3 A. Yes.

Objection (16:5 to 16:7):  
-Move to strike after  
"certainly"  
-Speculation

Ruling: Overruled.

Objection (16:9 to  
16:24):  
-Move to strike  
-Non-responsive  
narrative  
-No question  
pending  
-403  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

Objection (16:25 to  
17:3): 402, No  
foundation, Improper  
opinion testimony from  
non-retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 17:6 - 17:8

6 A. Yes. Together with Sayegh, Ang.

7 Q. Sayegh, Ang was the lead author?

8 A. Sayegh, yes, sir.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 17:17 - 17:25

17 Q. And you understand, of course, that SJS and  
18 TEN are acronyms for Stevens-Johnson  
19 syndrome and toxic epidermal necrolysis,  
20 correct?

## Bartlett v Mutual

21 A. Yes.  
 22 Q. Okay. Do you understand that the word or  
 23 the term "TEN" is reserved by doctors for  
 24 the more severe form of SJS but that it is  
 25 the same disease process?

Objection (17:22 to  
 17:25):  
 -402  
 -611(c)  
 -No foundation  
 -Argumentative

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 18:2 - 18:20

2 A. Whether it is exactly the same disease  
 3 process, I don't know. But it certainly  
 4 behaves like Stevens-Johnson, only, only  
 5 worse, and the matter of quibbling among  
 6 the dermatologists what should be called  
 7 erythema multiforme and what should be  
 8 called Stevens-Johnson and what should be  
 9 called TEN, and but it's probably a  
 10 spectrum of the same type of disease.

11 Q. Yes, sir. And have you gained the  
 12 understanding, oh, within the last ten  
 13 years since it occurred that dermatologists  
 14 as you referenced now define SJS as up to  
 15 ten percent of your total body surface area  
 16 being involved sluffing off or exfoliating;  
 17 between 11 and 29 percent as SJS TEN  
 18 overlap; and 30 percent and above they  
 19 reserve for the definition TEN?

20 A. I have heard that definition.

Objection (18:2 to  
 18:10):  
 -Move to strike after  
 "I don't know"  
 -Non-responsive  
 -402  
 -702  
 -No foundation  
 -Improper opinion  
 from non-retained  
 expert

Ruling: Sustained. Lines 18:2 through  
 18:3 are also stricken, since the objection  
 to the question was sustained.

Objection (18:11 to  
 18:20):  
 -402  
 -611(c)  
 -No Foundation  
 -Assumes facts not in  
 evidence  
 -Calls for speculation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 18:23 - 19:16

23 A. Okay. I have heard that definition. I  
 24 cannot vouch for how reasonable it is.  
 25 Q. When ophthalmologists like you refer to  
 00019

1 Stevens-Johnson syndrome, in your mind,  
 2 sir, are you referring to the entire  
 3 spectrum of the disease, whether it is SJS  
 4 or TEN?

5 A. Correct, yes. We, we lump it altogether.  
 6 We only see it as a gradient in terms of  
 7 severity.

8 Q. Okay.

9 A. And we don't have -- I don't use personally  
 10 any other name than Stevens-Johnson  
 11 syndrome.

12 Q. Thank you, sir. Are you aware that Karen  
 13 Bartlett, when she was at Mass. General,  
 14 not too far from where we are here today,  
 15 that they diagnosed her with the more  
 16 severe form called TEN?

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -Argumentative  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained as to lines 18:23  
 through 18:24. Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 19:19 - 20:18

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19 A. I was not aware of that.  
 20 Q. Okay. Fair to say that you never went back  
 21 and looked at her, I will represent to you,  
 22 over 1,000 page medical record from Mass.  
 23 General?  
 24 A. No. It doesn't matter from, from our point  
 25 of view what they call it. It is just the  
 00020  
 1 degree of severity that we can then see in  
 2 front of us that matters.  
 3 Q. Okay. And when you say the degree of  
 4 severity, sir, are you referring to the  
 5 amount of eye damage caused?  
 6 A. Yes.  
 7 Q. Okay. Of the approximate 50 SJS or TEN  
 8 patients you have treated in your career,  
 9 sir --  
 10 A. It must be more.  
 11 Q. Okay.  
 12 A. It must be at least, I think, at least a  
 13 hundred.  
 14 Q. Okay. Of the approximate hundred SJS TEN  
 15 patients you have treated in your career,  
 16 sir, what is your best estimate of how many  
 17 of those hundred were legally blind in one  
 18 or both eyes from SJS or TEN?

Objection (19:20 to  
 20:18):  
 -402  
 -611(c)  
 -Argumentative  
 -Misleading  
 -No foundation  
 -Misstates prior  
 testimony

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 20:22 - 20:25

22 A. I cannot remember in detail. But if I  
 23 operate on such a patient, they must be so  
 24 severe that they are bilaterally blind --  
 25 Q. And when you say --

Objection (20:22 to  
 20:24):  
 -Move to strike as  
 non-responsive  
 after "detail"  
 -402  
 -701  
 -No foundation  
 -Improper opinion  
 testimony from  
 non-retained expert

Ruling: Sustained. The answer on line  
 20:22 through "detail" may stand.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 21:3 - 21:24

3 THE WITNESS: Bilaterally blind  
 4 according to definitions.  
 5 Q. And when you say by definition, when you  
 6 operate on an SJS TEN patient they are, by  
 7 definition, bilaterally blind, does that  
 8 mean that they are legally blind in both  
 9 eyes or worse?  
 10 A. Correct.  
 11 Q. Okay. Right.  
 12 A. What is worse?  
 13 Q. Yes. Well, and let me ask you. 20 -- is  
 14 2200 the accepted definition of what is  
 15 legally blind?  
 16 A. In this country it is, yes.  
 17 Q. Okay. And vision does get worse than that,  
 18 correct?  
 19 A. Yes.  
 20 Q. Okay. For -- and please explain what it  
 21 means when we see a recordation like  
 22 counting figures or hand motion.

Objection (21:5 to  
 21:10): 402,  
 Argumentative,  
 Misleading, No  
 foundation, 701, 702,  
 Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained. The court notes here that  
 several of the upcoming sustained objections  
 involved testimony that might have been  
 admissible opinion testimony from a non-  
 retained treating physician if the questions had  
 tied or contextualized the testimony to the  
 treatment of the plaintiff. As the questions  
 were posed, however, they sought  
 inadmissible opinion testimony under Rules  
 701 and 703.

Objection (21:12 to  
 21:24): 402, Vague and  
 misleading, No  
 foundation, 701, 702,  
 Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained.

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23 First of all, are both those worse  
24 than legally blind, 2200?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 22:2 - 23:1

2 A. Well, anything below 2200's in this country  
3 is legally blind. And you can go down to  
4 2400's, you can go down to finger counting  
5 in front of the eye, you can go down to  
6 even worse, just hand movements, detecting  
7 the hand movements in front of the eye.  
8 Worse than that is just mere light  
9 perception where you cannot even see the  
10 hand but just see the light. And then of  
11 course, there is total blindness when there  
12 is no light perception.

13 Q. Okay. Let me see if I have the order  
14 correct from best to worse. Best would be  
15 legally blind at 2200; then it would get  
16 worst at 2400; then it would get worse at  
17 counting fingers; then it would get worse  
18 at hand motion; and then it would get worse  
19 at light perception only.

20 A. Correct.

21 Q. Do I have the order correct?

22 A. Correct.

23 Q. Okay. And anything in the question I just  
24 gave beyond 2200 is also legally blind,  
25 it's just worse, meeting the threshold of  
00023

1 legally blind, correct?

Objection (22:13 to  
23:1):

-402

-No foundation

-611(c)

-701

-702

-Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 23:6 - 23:8

6 A. Correct.

7 Q. Thank you. Do SJS and TEN cause legal  
8 blindness?

Objection (26:7 to  
26:8): 402, No  
foundation, 701, 702,  
Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 23, Line 11

11 A. It certainly can, and those are the

Witness\_ Claes Dohlman, M.D., Ph.D. -: 23:16 - 24:10

16 Is what I just handed you, marked  
17 Exhibit No. 134, sir, is that the 2008  
18 publication that you just referenced that  
19 you were one of the authors of?

20 A. Correct.

21 Q. Okay. And in fact --

Objection:

-402

-No foundation

-701

-702

-Improper opinion  
testimony from  
non-retained expert

Ruling: Sustained.

**Bartlett v Mutual**

22 A. I was the senior author.  
 23 Q. Yes, sir. And there you are. And it's  
 24 published in 2008.  
 25 And the very first sentence says,  
 00024  
 1 "Stevens-Johnson syndrome often causes  
 2 severe ocular surface disease and  
 3 impairment of vision." Correct?  
 4 A. Correct.  
 5 Q. Okay. And when you published just last  
 6 year that SJS often causes severe ocular  
 7 surface disease and impairment of vision,  
 8 were you including in that legal blindness  
 9 or worse?  
 10 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 24:13 - 24:15

Objection:  
 -402  
 -No foundation  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)

Ruling: Sustained.

13 Is there a relationship between  
 14 counting fingers at any feet and a  
 15 numerical value like 2500 or 21,000?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 24:18 - 25:7

Objection:  
 -402  
 -No foundation  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)

Ruling: Sustained.

18 A. There is, although we don't use that.  
 19 Below 2400, we don't use that. We don't  
 20 use in our parlance here 2800 or less.  
 21 Q. Why not?  
 22 A. We -- custom.  
 23 Q. Okay.  
 24 A. And there is another system of measuring  
 25 vision more exactly with the Logmar system.  
 00025  
 1 And there is a correlation table there and  
 2 we use that Logmar in scientific studies  
 3 sometimes. But it has no particular  
 4 meaning here, what we call it.  
 5 Q. Is 2400 the last numerical value and also  
 6 the worst vision that doctors generally put  
 7 by numerical value?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 25:9 - 25:10

9 A. Correct. That is the standard use of the  
 10 word.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 26:8 - 26:10

Objection:  
 -402  
 -701  
 -702  
 -Argumentative  
 -No foundation

Ruling: Sustained.

8 Q. How certain are you, Doctor Dohlman, that  
 9 SJS and TEN can and do cause legal

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-Improper opinion  
testimony from non-  
retained expert  
-Vague  
-Misleading  
-Confusing

10 blindness or worse?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 26:16 - 27:7

16 A. Okay. Because we, we see these patients  
17 here often referred to us and with that  
18 history.  
19 Q. Mm-hmm.  
20 A. And we often have records from the  
21 referring hospitals and/or MGH or  
22 elsewhere, clearly spelling out the  
23 diagnosis and the history. So there is no  
24 question that that episode of  
25 Stevens-Johnson episode and the sequels is  
00027

1 what causes the blindness and not  
2 necessarily anything else.  
3 Q. Okay. And if you can, Doctor, can you put  
4 a number on that? When you say there is no  
5 question, does that mean in your mind that  
6 it's 100 percent certainty that SJS and TEN  
7 can and, in fact, do cause legal blindness?

Objection:  
-402  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Vague  
-Misleading  
-Confusing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 27, Line 10

10 A. 100 percent certain.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 28:9 - 29:17

9 Can you do us a favor, Doctor  
10 Dohlman, and with this eye model, perhaps,  
11 tell us how the human eye works in a  
12 healthy adult or child?  
13 A. Okay. We have a cross section of the eye  
14 here. And let's see now. A cross section  
15 of the eye, and this is the front part.  
16 Here is the cornea, which is normally in  
17 you and me so transparent so that we don't  
18 see it. We can see the blue or brown iris  
19 and the pupil through it, but normally we  
20 don't see it.  
21 But if the cornea is opaque, then  
22 we see it as a white scar often  
23 vascularized with blood vessels, and then  
24 the cornea becomes visible and often white,  
25 grayish or white.

00029

1 Now, the clear cornea is necessary  
2 for the image formation on the retina back  
3 here. So that light comes in through the  
4 cornea and it is refracted, meaning that it  
5 is bent by the curve here, it is bent  
6 towards the retina. There is more bending

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

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7 necessary, and that is done by the  
 8 crystalline lens behind, behind the iris,  
 9 and then it is focused on the retina and  
 10 the image is then formed on the retina.  
 11 And the message from there goes to the  
 12 brain.  
 13 Q. Thank you, Doctor. Now, if you could keep  
 14 the model in your hand and tell us when you  
 15 are presented with a person who has SJS or  
 16 TEN and they are legally blind or worse,  
 17 what is different about the eye?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 29:22 - 30:6

22 A. The difference is that, as I mentioned, the  
 23 cornea is very scarred. The surface is  
 24 irregular and there are blood vessels in  
 25 the cornea.

00030

1 In addition, there are other  
 2 problems. As a rule, they often have  
 3 glaucoma, meaning high pressure, and they  
 4 often have cataracts, meaning that the  
 5 normal crystalline lens behind here becomes  
 6 cloudy as well.

Objection:

-402  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 30:9 - 30:14

9 When you estimated that you  
 10 treated about 100 people with SJS and TEN  
 11 in your career and you said by definition  
 12 they were bilaterally legally blind, does  
 13 that mean that you operated on every one of  
 14 the SJS TEN patients that you saw?

Objection: 402, 701,  
 702, Improper opinion  
 testimony from non-  
 retained expert,  
 Misleading,  
 Misrepresents prior  
 testimony, 611(c),  
 Argumentative, Calls  
 for speculation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 30:17 - 31:7

17 A. I probably have operated on about a  
 18 hundred. And that means that they are so  
 19 bad that nothing, nothing else can help.  
 20 In addition, I am sure that I have seen a  
 21 number of lighter cases that have come for  
 22 consultation and so on where I've deemed  
 23 that surgery would be too risky or not  
 24 needed at all.

25 Q. Okay.

00031

1 A. And how many of those, I don't remember.  
 2 Q. Fair enough. Have SJS and TEN patients  
 3 generally been referred to you because your  
 4 ophthalmology colleagues here at Harvard or  
 5 elsewhere in the country or the world  
 6 believe that they should be evaluated for

Objection (30:17 to 30:24):  
 402, 701, 702, Improper  
 opinion testimony from non-  
 retained expert, Misleading,  
 Misrepresents prior  
 testimony, 611(c),  
 Argumentative, Calls for  
 speculation

Ruling: Sustained.

Objection (31:2 to 31:7):  
 402, 701, 702, Improper  
 opinion testimony from non-  
 retained expert, Misleading,  
 611(c), Argumentative, Calls  
 for speculation, No  
 foundation

Ruling: Sustained.

## Bartlett v Mutual

7 surgery?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 31:10 - 31:25

10 A. Yes. We have a corneal service here which  
11 I started in 1958. And that has developed  
12 into a large referral service for not only  
13 local but also national and international  
14 patients. And but that doesn't mean that  
15 we see them all in the country, of course  
16 not. There are many other good cornea  
17 surgeons around that are also consulted.  
18 But most of them do not operate on  
19 Stevens-Johnson because of the bad outcome  
20 with standard corneal transplantation.  
21 Q. Okay. Please tell us how bad the outcome  
22 presently is, as understood by medicine  
23 today in 2009, for using a traditional  
24 standard corneal replacement in a blind eye  
25 from SJS or TEN.

Objection (31:10 to  
31:20):  
-Move to strike as non-  
responsive after "Yes"

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 32:4 - 32:24

4 A. It is hard to say because of the  
5 differences in severity. You can have less  
6 than 2200's and still be a reasonably wet  
7 that is reasonably wet and reasonably  
8 comfortable and gives a little bit of  
9 vision, and we turn them down for any  
10 surgery. And then that is on one end.  
11 And the other end, when they have  
12 totally dried up so that the whole surface  
13 of the cornea in the eye is like leather  
14 and there is no wetness at all. Under  
15 those harsh circumstances, a standard  
16 corneal transplant is absolutely 100  
17 percent hopeless.  
18 Q. You just said the eye looks like leather.  
19 I'm showing you now, Doctor  
20 Dohlman, you have a copy of it there,  
21 pictures from your 2008 publication. Tell  
22 us what these pictures depict and how that  
23 might help you explain what you just  
24 testified to.

Objection (31:21 to  
32:17):  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Misleading  
-611(c)  
-Argumentative  
-Calls for speculation  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 33:4 - 35:20

4 MR. JENSEN: Yes. And here,  
5 here's a copy.  
6 A. Okay. The upper left depicts a patient  
7 with Stevens-Johnson and shrinkage and  
8 swelling of the conjunctiva outside the  
9 cornea. The cornea is moderately hazy.

Objection (32:18 to  
35:20):  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Misleading  
-611(c)  
-Argumentative  
-Calls for speculation  
-No foundation

Ruling: Sustained as to lines 33:4  
through 33:24. Otherwise overruled.  
The witness's explanation of his  
surgical technique is linked, at the  
end of this line of questioning, to  
Bartlett's surgery (see lines 42:20  
through 43:7).

Bartlett v Mutual

10 The surface is irregular, as you can see  
 11 from the light reflex that is broken up,  
 12 and it is fairly dry and there have been  
 13 forming, there are, there have been formed  
 14 symblephara. That is shrinkage of the fold  
 15 between the lid and the eye.  
 16 Q. You are still on the top left picture, sir?  
 17 A. That is the top left, yes.  
 18 Q. Thank you, sir.  
 19 A. And in the top right, there is an even  
 20 worse situation. There, the -- it has  
 21 become so dry so that the surface of the  
 22 cornea is completely dry.  
 23 Q. Okay.  
 24 A. There are no tears any longer.  
 25 Q. Okay. And before we go to the next images,  
 00034  
 1 sir, is what I'm showing you now and what  
 2 I'm showing on the screen, is that, sir,  
 3 your invention?  
 4 A. Yes.  
 5 Q. And for the record, that is the Boston  
 6 K-Pro?  
 7 A. Yes.  
 8 Q. Okay. And are there two different types of  
 9 the Boston K-Pro shown on Exhibit No. 127?  
 10 A. Yes. And the left one is one, the one we  
 11 are using in 98 percent of our cases or so.  
 12 And that is for the usually normally wet  
 13 eye and not autoimmune diseases.  
 14 But in the extremely dry eye, then  
 15 we -- there is no conjunctiva left. We  
 16 remove --  
 17 Q. What is conjunctiva, please?  
 18 A. Conjunctiva is the thin mucous membrane  
 19 layer over the white sclera. In other  
 20 words, it's outside the cornea.  
 21 Q. Okay.  
 22 A. And --  
 23 Q. What is the sclera, please, sir?  
 24 A. The sclera is the white of the eye --  
 25 Q. Okay.  
 00035  
 1 A. -- that we see outside the cornea. And  
 2 covering that is a thin layer of  
 3 conjunctiva and a few blood vessels and so  
 4 on. And it is normally invisible. But if  
 5 that has dried up and then we cannot use  
 6 the Type 1, as we call the left one. So we  
 7 -- I close the lid, I remove the tissue  
 8 here, I put in the Type 2 keratoprosthesis  
 9 that has, looks like Type 1 but has an  
 10 extra stem up front. And then I lead that  
 11 through the lids, I close the lids and I  
 12 lead that stem through the upper lid, the  
 13 edge of the upper lid.  
 14 And one can see the net result in  
 15 the lower right corner.  
 16 Q. Right here?  
 17 A. There is type, Type 2. Yes, that there.  
 18 Q. Okay. Yes, sir.  
 19 A. There is the Type 2 that functions. And I

Bartlett v Mutual

20 would come to the --

Witness\_ Claes Dohlman, M.D., Ph.D. -: 35:23 - 36:5

23 Q. Okay. On this there is five pictures, sir.  
24 And if you would, if you would go through  
25 those five pictures with us and basically  
00036  
1 tell us what they are in relation to your  
2 surgery, we would appreciate that.  
3 And as you flip through the  
4 pictures, I will show the jury what you're  
5 speaking of.

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Misleading  
-611(c)  
-Argumentative  
-Calls for speculation  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 36:8 - 37:2

8 A. The design only shows the dimensions of the  
9 device and the way of assembly.  
10 Q. Okay.  
11 A. And I don't think you should have much  
12 interest except that we put it into a  
13 standard corneal graft. We make a hole.  
14 The second layer up there to the left --  
15 Q. Yes, sir.  
16 A. -- is the corneal graft. And we punch that  
17 out.  
18 Q. Here?  
19 A. And then we punch a hole in the middle.  
20 And then we stick the stem down into that  
21 hole. And then we screw or snap that into  
22 the backplate with holes for nutrition.  
23 And then to lock it, we have a titanium  
24 locking ring that we snap on behind the  
25 backplate.  
00037  
1 Q. Do the --  
2 A. And that locks it in.

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Misleading  
-611(c)  
-Argumentative  
-Calls for speculation  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 37:8 - 41:9

8 Q. Yes. Or look at the fourth or fifth also.  
9 Tell us, you tell us what's best. That is  
10 the second and then there is a third,  
11 fourth and fifth. So taking a look at the  
12 third, yes, sir, and then the fourth and  
13 fifth and tell us what they are, please.  
14 A. So here, again, we see the front part of  
15 the device. And we have the backplate and  
16 then we have the locking ring. And we  
17 clamp then the corneal graft in between.  
18 And then if we look at it from the  
19 back side, this is the way it looks. And  
20 so we have, we are looking here now at the

Objection (37:8 to  
41:7):  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Misleading  
-611(c)  
-Argumentative  
-Calls for speculation  
-No foundation

Ruling: Overruled.

Bartlett v Mutual

21 locking ring where centrally we have the  
22 stem of the keratoprosthesis.

23 Q. Okay.

24 A. And then we have the locking ring of the  
25 titanium behind. And then we see the

00038

1 backplate with the holes.

2 And then in front of that, of

3 course, is the cornea. And then we put --

4 Q. Is this eye picture a picture of an eye  
5 after it has your Boston K-Pro implanted in  
6 it?

7 A. This picture is, yes.

8 Q. Yes, sir.

9 A. Correct. And we then trephine out the  
10 patient's cornea and then we put in the  
11 cornea with the device.

12 Q. And when you say trephine out the patient's  
13 cornea, what does that mean, sir?

14 A. Trephine is almost like a cork-boring  
15 instrument. It is like a tube with a sharp  
16 edge. And we trephine out so that we can  
17 then excise the patient's cornea in about  
18 eight-millimeters diameter or so.

19 And then we put our cornea that is  
20 loaded with the device, we put it into the  
21 eye, and then we suture it in place just  
22 like a regular cornea transplant.

23 Q. Are these 12 lines we see here on the eye,  
24 are those sutures?

25 A. Yes, they are, exactly.

00039

1 Q. Are those --

2 A. Nylon sutures.

3 Q. Are these 12 nylon sutures through and sewn  
4 through a human donor cornea?

5 A. Yes.

6 Q. Okay. If you could look at the next page,  
7 please, sir, and tell us what that is.

8 A. This is part of the assembly. And here we  
9 have a patch of adhesive. And then we have  
10 the front part of the keratoprosthesis,  
11 which is the front plate, and there is a  
12 stem. And then we put that upside down on  
13 the adhesive for standardization, and then  
14 we slide over the corneal graft, slide over  
15 the stem and push it down. And then we put  
16 the backplate on top of that.

17 Q. Is what we're looking at here the human  
18 donor corneal tissue?

19 A. Yes.

20 Q. Okay. Is it correct to state that the  
21 Boston K-Pro is a mix of both your device,  
22 the -- is your device made of plastic?

23 A. Yes.

24 Q. Okay. Is it correct to state that the  
25 Boston K-Pro is a mix of your device, which

00040

1 is plastic, with a human corneal tissue so  
2 it's both live tissue as well as plastic?

3 A. Well, I wouldn't define it that way. I  
4 think the Boston Keratoprosthesis is the

Bartlett v Mutual

5 foreign part. And then we use a standard  
6 cornea, donor cornea from an eye bank as a  
7 carrier, but not necessarily.

8 Q. And when you say carrier, please tell us,  
9 Doctor, what is the vehicle that is  
10 delivering sight; is it your plastic or is  
11 it the cornea? Please teach us.

12 A. No. The cornea only holds, holds the  
13 device in place. But the image and the  
14 light goes through the stem of the  
15 keratoprosthesis.

16 Q. Look at the last page, please, and maybe  
17 that will help you explain.

18 A. So this, again, we see an assembled  
19 combination from behind so we see this --  
20 here is now the stem. It looks a little  
21 milky but it's transparent normally, and  
22 then the locking ring of titanium. And we  
23 have the backplate with the holes. And  
24 then in front of that or under that and  
25 sticking out here is the cornea.

00041

1 Q. Okay. So the red --

2 A. The carrying cornea.

3 Q. Is this red area the carrying cornea in the  
4 picture?

5 A. Yes.

6 Q. Okay. So why, teach us about your  
7 invention, please.

8 Why mix human tissue with this  
9 plastic device?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 41:12 - 41:21

12 A. Well, a keratoprosthesis, by definition,  
13 will have to be inserted into the eye  
14 tissue to be of any use. And to be  
15 inserted into the cornea, you can insert it  
16 directly into the cornea via incisions and  
17 so on, or you can build it in just like  
18 this and have that carrier graft implanted  
19 with the device, which is much more  
20 practical. Not only practical but also  
21 gives much less complications, much less.

Objection (41:8 to  
41:21):

-402  
-701  
-702  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Vague

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 42:8 - 43:8

8 Those two bottom pictures right  
9 there, sir.

10 A. These ones?

11 Q. Yes, sir.

12 A. Okay. The bottom pictures?

13 Q. Yes, sir.

14 A. The bottom picture to the left is where we  
15 have been able to get away with a Type 1 in  
16 an eye, in a Stevens-Johnson eye which

Objection:

-402  
-701  
-702  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Vague

Ruling: Overruled.

## Bartlett v Mutual

17 still has been somewhat wet; in other  
18 words, tears still functioning.

19 Q. Okay.

20 A. And it might be even have been Mrs.  
21 Bartlett. I don't know.

22 But that is roughly what -- I  
23 think Ms. Bartlett was a little more  
24 inflamed, but that was the type of  
25 operation we did with Mrs. Bartlett.

00043

1 Because she had still a wet eye, she was  
2 very vulnerable and prone to breakdown and  
3 so on, but the eye was wet.

4 Q. Right.

5 A. So we did not have to go to a much more  
6 stymying and ugly and cosmetically  
7 unacceptable Type 2.

8 Q. Right. You raised, you raised a question

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 44:7 - 45:5

Are

8 all of the 16 people that this study was  
9 done about all operated on by one surgeon,  
10 namely you?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. And is it --

15 A. And we, we took only those cases where we  
16 had at least a year or two minimum  
17 follow-up and most of them longer.

18 Q. Yes, sir.

19 A. So I don't think she qualified as for  
20 follow-up.

21 Q. Yes, sir. And this 2008 published article  
22 is entitled, to abbreviate, the Boston  
23 K-Pro in SJS. Correct?

24 A. Yes.

25 Q. And it wasn't the first time that you had  
00045

1 been the sole surgeon of a series of  
2 patients that was published. Another time  
3 was in 2001. The lead author was Doctor  
4 Yaghouti and you were a co-author but you  
5 were the sole surgeon as well. Correct?

Objection:

-402

-No foundation

-Improper opinion  
testimony from non-  
retained expert

-611(c)

Ruling: Sustained.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 45:8 - 46:13

8 A. Yes. I was a -- yes, I have been the sole  
9 surgeon all along until Doctor Chodosh  
10 came. Now he is inheriting some of my  
11 patients but --

12 Q. And let me ask you. Is Doctor Chodosh, as  
13 we sit here today in September of 2009, the  
14 only other surgeon at Harvard Medical

Objection:

-402

-No foundation

-701

-702

-Improper opinion  
testimony from non-  
retained expert

-611(c)

-Speculation

Ruling: Sustained.

**Bartlett v Mutual**

15 School/Mass. Eye & Ear who presently  
 16 performs the Boston K-Pro other than  
 17 yourself?  
 18 A. No. There are several. Dr. Kathryn Colby  
 19 has a large number, and Dr. Roberto Pineda  
 20 has some. Ula Uccunas has a few. And I  
 21 think Doctor Dana has a few, and so on.  
 22 And Doctor Melky has a number. So really  
 23 it is all spread all over the system, but  
 24 they don't tackle these severe cases.  
 25 Q. Oh, okay.  
 00046  
 1 A. So they, they -- we are handling the worst.  
 2 Q. I -- there is a newsletter for the Mass.  
 3 Eye and Ear infirmary. Correct, sir?  
 4 Is that correct, sir?  
 5 A. Yes.  
 6 Q. Okay. And you said that only a few are  
 7 tackling the worst.  
 8 Let me ask you, is Doctor Chodosh  
 9 one who is tackling the worst cases of  
 10 Stevens-Johnson syndrome?  
 11 A. Yes.  
 12 Q. And hopefully curing or attempting to treat  
 13 those?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 46:18 - 47:5

18 A. Yes, he is.  
 19 Q. Okay.  
 20 A. Doctor Chodosh. Parenthetically, I will be  
 21 87 tomorrow, so I have a good reason to  
 22 look for a successor. And we recruited  
 23 Doctor Chodosh, who is a very experienced  
 24 academic. And so he has been here for over  
 25 a year.  
 00047  
 1 Q. Okay.  
 2 A. And he has a special interest and special  
 3 expertise in these severe autoimmune  
 4 diseases. So I am asking Doctor Chodosh to  
 5 from now on to take care of that category.

Objection:  
 -402  
 -701  
 -702  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)  
 -Speculation  
 -801  
 -802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 47:8 - 48:11

8 Q. Let me first ask you, is Exhibit No. 130,  
 9 sir, a copy of a 2008 newsletter for Mass.  
 10 Eye and Ear Infirmary?  
 11 (Witness perusing document.)  
 12 A. Yes.  
 13 Q. Okay. And if you flip the page there, is  
 14 that a picture of Doctor Chodosh, oh, about  
 15 six pages back, one, two, five pages back?  
 16 (Witness perusing document.)  
 17 A. Yes.  
 18 Q. Okay. And it states --

Objection (47:8 to  
 48:6):  
 -402  
 -No foundation  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)  
 -Speculation  
 -801  
 -802

Ruling: Sustained.

Bartlett v Mutual

19 A. You can get a better copy than this. We  
 20 have better.  
 21 Q. Yes. I am not trying to do a disjustice to  
 22 him with my copy. I apologize.  
 23 But you mentioned very difficult  
 24 cases. And it says here by Doctor Chodosh,  
 25 it shows his picture, that he, his clinical  
 00048  
 1 interests include the visual restoration of  
 2 hopeless cases.  
 3 A. Yes.  
 4 Q. Do you see that, sir?  
 5 A. Yes.  
 6 Q. Are SJS and TEN what you categorize as  
 7 hopeless cases?  
 8 A. Absolutely.  
 9 Q. Why are SJS and TEN blindness cases  
 10 categorized by you and your colleagues at  
 11 Harvard as hopeless cases?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 48:14 - 49:8

14 A. Well, I would say -- I wouldn't say that.  
 15 I wouldn't use the term hopeless, but the  
 16 most severe.  
 17 Q. Okay.  
 18 A. Because experience has shown me, and that  
 19 was during -- we had a fellow here,  
 20 Yaghouti, who wrote up some of the early  
 21 cases. And we found that there were  
 22 prognostic categories that varied markedly  
 23 from each other and in the small but  
 24 important category of autoimmune diseases,  
 25 among which Stevens-Johnson is one and  
 00049  
 1 perhaps the most severe. But the  
 2 autoimmune diseases are much more  
 3 difficult, much much more difficult to  
 4 carry through than the rest.  
 5 Q. And Stevens-Johnson syndrome and TEN are  
 6 classified by you and your colleagues as  
 7 autoimmune diseases. Correct?  
 8 A. Yes.

Objection:  
 -402  
 -No foundation  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)  
 -Speculation  
 -801  
 -802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 49:12 - 49:15

12 Is it correct to say that you  
 13 would never use the word "hopeless" when  
 14 speaking with a patient?  
 15 A. Only if they have no light perception.

Objection:  
 -402  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 50:19 - 50:21

Bartlett v Mutual

19 Q. Okay. Are you and now Doctor Chodosh the  
20 doctors at Harvard who specialize in the  
21 most difficult and severe cases?

Objection:  
-402  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 51:1 - 51:3

1 A. Correct.  
2 Q. Okay. Are SJS and TEN the most difficult  
3 and severe blindness cases?

Objection (51:2 to  
51:3):  
-402  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)  
-701  
-702

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 51, Line 5

5 A. In my mind, it is.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 51:9 - 51:11

9 Why is it the case that, in your  
10 mind, SJS and TEN are the most difficult  
11 and severe blindness cases?

Objection (51:9 to  
52:20):  
-402  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)  
-701  
-702

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 51:13 - 52:20

13 A. I learned this early on that  
14 Stevens-Johnson, outcome of  
15 keratoprosthesis in Stevens-Johnson  
16 syndrome was particularly bad. In fact, in  
17 the -- excuse me.

18 MR. COSGROVE: Doctor, would you  
19 like a glass of water?

20 THE WITNESS: No, it hasn't helped  
21 for 87 years. It won't help now.

22 A. In the early '90's, I realized that our  
23 results with Stevens-Johnson were so bad so  
24 that I had a voluntary moratorium on them.  
25 I had seven cases and they all went down

00052

1 to, to zero vision within five years. And  
2 that was in part due to glaucoma and in  
3 part due to infection. But then we learned  
4 how to use prophylactic antibiotics, and we  
5 introduced Vancomycin particularly. So  
6 that now we don't have any infections  
7 practically as long as we used the  
8 antibiotics prophylaxis. The glaucoma  
9 situation is also much better because we  
10 have added techniques there also.

11 So then I took up Stevens-Johnson  
12 again. And the 16 first cases were the  
13 ones that we just presented, with a couple  
14 linear curve here and there, about 50

Bartlett v Mutual

15 percent instead of zero percent had  
16 reasonable vision after five years. But 50  
17 percent is not 100 percent, and there was  
18 still a lot of hassle and there is still,  
19 in my firm opinion as we stand now the --  
20 it is our worst category.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 52:23 - 53:5

23 When SJS and TEN cause blindness,  
24 are patients always legally blind in one or  
25 both eyes from the time their skin is  
00053  
1 sluffing off, or can they get legal  
2 blindness caused by SJS and TEN months or  
3 years after the person gets out of the  
4 hospital and their skin appears to be  
5 healing?

Objection:  
-402  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)  
-701  
-702

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 53:9 - 54:6

9 A. The latter is correct. That is in fact --  
10 Q. Why?  
11 A. Why, I don't know. But it is actually the  
12 most common sequence of events that they  
13 leave the hospital when they seem well and  
14 often with tears, and then it takes usually  
15 years until so much scarring so that the  
16 outflow channels from the lacrimal glands  
17 are squeezed off and dried. That dries up  
18 the eye, and then the rest is a downhill  
19 course.  
20 Q. Okay.  
21 A. So it is very often that they can see well  
22 for 10 years, 20 years or a little bit  
23 less, and then eventually they go blind, or  
24 they can go blind after a year or two.  
25 Q. Let me put some more definite times in my  
00054  
1 question.  
2 Doctor Dohlman, is it true that  
3 SJS and TEN can cause legal blindness a  
4 month, a year, and even five years or more  
5 after someone's skin appears to be healing  
6 from their SJS and TEN?

Objection:  
-402  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)  
-701  
-702

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 54:11 - 55:9

11 A. That is correct.  
12 Q. Okay.  
13 A. There is no question about it.  
14 Q. Okay.  
15 A. We see this --

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16 Q. Are you 100 percent certain of that?  
 17 A. I am 100 percent certain.  
 18 Q. Okay.  
 19 A. And we, we've learned about the history, we  
 20 get the records and we see the  
 21 developments. And they saw at that time  
 22 when they left the hospital 20/20 and then  
 23 they saw 20/70, and then now they see  
 24 2400's or something like that.  
 25 Q. Is it correct then in your career, Doctor  
 00055  
 1 Dohlman, you've been involved with many  
 2 medical symposiums and continuing medical  
 3 education classes, and you're part of the  
 4 Boston K-Pro Study Group, and in many of  
 5 these forums would it be fair to state that  
 6 you discuss with your medical colleagues  
 7 matters which include what causes SJS and  
 8 TEN, what causes blindness, and how, when  
 9 and why you do surgery?

Objection:  
 -402  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)  
 -701  
 -702  
 -Misleading  
 -Confusing  
 -Argumentative

Ruling: Sustained (through line 56:10).

Witness\_ Claes Dohlman, M.D., Ph.D. -: 55:13 - 55:22

13 A. We have the largest experience with  
 14 Stevens-Johnson in at least in this  
 15 country. But of course, we always, at  
 16 meetings, discuss the experience of our  
 17 colleagues with our colleagues and discuss  
 18 their experience as well.  
 19 Q. Have you at any time in your career, Doctor  
 20 Dohlman, ever read or ever heard any doctor  
 21 state, suggest or opine that SJS and TEN  
 22 cannot cause legal blindness?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 55:24 - 56:7

24 A. I have never heard that.  
 25 Q. Okay. In your entire medical career, have  
 00056  
 1 you ever heard of any doctor or have you  
 2 ever read any assertion or heard any doctor  
 3 state that, suggest or opine that SJS and  
 4 TEN cannot cause legal blindness months,  
 5 years, or even five years after a person's  
 6 skin appears to be healing from SJS and  
 7 TEN?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 56:9 - 56:10

9 A. I have never read or seen or heard any such  
 10 opinion.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 56:18 - 57:20

18 Q. Who is Doctor Papaliadis, sir?  
 19 A. He is an esteemed colleague here at the  
 20 hospital and he has expertise in  
 21 inflammatory eye diseases.  
 22 Q. Okay. If you would flip to the third  
 23 letter there.  
 24 A. Yes.  
 25 Q. It is dated August 10, 2006. And you are  
 00057  
 1 copied on it, correct?  
 2 (Witness perusing document.)  
 3 A. Third letter, okay, to Doctor Lane.  
 4 Q. And you are copied on the bottom, correct?  
 5 A. Yes.  
 6 Q. And in his last sentence of the letter he  
 7 says, "I suggested evaluation by Dr. Claes  
 8 Dohlman for consideration of K-Pro in left  
 9 eye." It says OS, correct?  
 10 A. Okay.  
 11 Q. And when you see OS, that is a reference to  
 12 the left eye, right?  
 13 A. Correct.  
 14 Q. And OD is a reference to the right eye,  
 15 correct?  
 16 A. Correct.  
 17 Q. So do you understand this letter to be one  
 18 that Doctor Papaliadis, another professor  
 19 here at Harvard, is suggesting that Karen  
 20 be evaluated by you?

Objection:  
 -402  
 -611(c)  
 -801  
 -802  
 -Speculation  
 -No foundation

Ruling: Sustained. Throughout this line of questioning (up to page 69 of the deposition), and again at the end of the deposition (pages 179-182), the witness is asked to testify about what other doctors meant in medical records that the witness has not even been asked if he recalls, and no foundation has been laid as to the role of these records in the witness's treatment of the plaintiff. Such testimony is improper. The witness has not been retained as an expert on the meaning of medical terms.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 57:23 - 58:11

23 A. Correct.  
 24 Q. Okay. I just want to show you two letters  
 25 before that, sir, so we can just do a  
 00058  
 1 timeline.  
 2 The first letter of Doctor  
 3 Papaliadis is dated March 1st, '06.  
 4 Do you see that, sir?  
 5 A. Yes.  
 6 Q. And at this time, in paragraph three, he  
 7 records visual acuity of 20/60 in Karen's  
 8 right eye and 2100 in her left eye.  
 9 And neither of those are legally  
 10 blind, correct?  
 11 A. Right, correct.

Objection:  
 -402  
 -611(c)  
 -801  
 -802  
 -Speculation  
 -No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 58:15 - 59:18

15 He says in his bottom paragraph,

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16 "She has multiple ophthalmic issues  
17 requiring attention. She continues to  
18 inadequately lubricate the ocular surface  
19 despite punctal plugs."  
20 What are the punctal plugs, sir,  
21 and how does that relate to inadequate  
22 lubrication?  
23 A. Punctal plugs are plugging the little  
24 outflow channels from the, from the outside  
25 of the eye and into the nose. That's where  
00059  
1 tears drain normally.  
2 And if we have scant tears, there  
3 is a technique of plugging those holes and  
4 allowing those scant tears to be around a  
5 little longer and be more wetting. That is  
6 the principle.  
7 Q. Okay. And he says, "She may need lateral"  
8 -- can you pronounce the words for me -- is  
9 it tarsorrhaphy?  
10 A. Tarsorrhaphy.  
11 Q. What is that, sir?  
12 A. That is suturing the lids together.  
13 Q. Does that mean you're sewing the eyes shut  
14 so the eyes can't open?  
15 A. Yes. At least in part.  
16 Q. Okay. Why, to your understanding, was it  
17 being considered that Karen's eyes be sewn  
18 shut?

Objection:  
-602  
-611(c)  
-801  
-802  
-Speculation

Ruling: Sustained as to lines 58:16 through 59:15.  
Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 59:21 - 60:18

21 A. Because they -- it's all a matter of  
22 preventing evaporation. Evaporation goes  
23 on, drying goes on from the surface of the  
24 eye all the time. But if one closes the  
25 lids, that is brought to zero, those areas  
00060  
1 that are covered. So that often helps in a  
2 situation where the tears are drying up.  
3 The eye is very drying. And especially if  
4 we get ulcers and so on, one can protect  
5 the eye quite well with tarsorrhaphy.  
6 Q. Okay. Let's go to the next letter, please,  
7 sir, and it's just three months later than  
8 the first letter. And it is dated June 8,  
9 2006.  
10 Do you see that, sir? Are you  
11 there?  
12 A. Yes.  
13 Q. And in this letter, Doctor Papaliodis sends  
14 a letter to Dr. Leo Lane, who is Karen's  
15 primary care physician. And he reports in  
16 part that she has ocular surface disease  
17 secondary to her Stevens-Johnson syndrome.  
18 Do you see that, sir?

Objection:  
-602  
-611(c)  
-Speculation  
-No foundation

Ruling: Sustained as to lines 60:6 through  
60:21. Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 60, Line 21

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21 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 61:3 - 61:11

3 Q. When he used the word "secondary" here,  
4 sir, does that mean the same thing as  
5 caused by?

6 A. Yes.

7 Q. Okay. So do you understand this to mean  
8 that Doctor Papaliodis, your colleague here  
9 at Harvard, has concluded that Karen's  
10 ocular surface disease was caused by her  
11 Stevens-Johnson syndrome?

Objection:  
-602  
-611(c)  
-Speculation  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 61:16 - 61:21

16 A. Yes.

17 Q. Okay. And he at this date records, three  
18 months after she is here in March, that she  
19 has 20/60 in her right eye, and that she is  
20 legally blind with 2200 in her left eye.  
21 Correct?

Objection:  
-602  
-611(c)  
-Speculation  
-No foundation  
-801  
-802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 61:24 - 63:6

24 A. Correct.

25 Q. Okay. And then he says that she has trace  
00062

1 conjunctival injection OU.

2 OU means both eyes, right?

3 A. Both eyes.

4 Q. What does trace conjunctival injection  
5 mean? And he also says --

6 A. It's slightly red.

7 Q. Okay. And then he says it has progressive  
8 corneal vascularization in the left eye.

9 What does that mean?

10 A. That means that blood vessels are growing  
11 into the cornea in the left eye. And that  
12 is a bad sign.

13 Q. Why?

14 A. Because it is usually correlated with later  
15 development of scarring and irregularity,  
16 and perhaps even ulceration of the cornea.

17 Q. Okay. And he -- and then he says that she  
18 had some symblephara present temporally.  
19 He means in both eyes, right? Is that  
20 correct?

21 A. Correct.

22 Q. What does that mean?

Objection:  
-602  
-611(c)  
-Speculation  
-No foundation  
-801  
-802

Ruling: Sustained.

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23 A. Symblephara refers to adhesions that form  
24 between the lids and the globe, and that  
25 shrinks the fornix on both sides.

00063

1 Q. If you would show us what an adhesion is  
2 that he is referring to here, some  
3 symblephara.

4 A. We don't have any lids here so it cannot  
5 really be shown. But I can show it on one  
6 of those images we had up.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 63:9 - 64:3

Do you need your

10 2008 publication?

11 A. Yes.

12 Q. Okay. And these pictures right here,  
13 these?

14 A. So here, for instance.

15 Q. On the top left, this one?

16 A. Top left.

17 Q. Yes, sir.

18 A. There is an effusion between the lids and  
19 the globe.

20 Q. Okay.

21 A. And it is also here. That is almost  
22 complete here.

23 Q. Okay. And let me see if -- is it correct  
24 to state when you talked about symblephara,  
25 that is in very lay terms your eyelid

00064

1 adhering to your eyeball or sticking to  
2 your eyeball?

3 A. Correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 64:6 - 64:8

6 Q. Is, in very lay terms, your eyelid sticking  
7 or fusing to your eyeball caused by SJS and  
8 TEN?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 64:11 - 64:16

11 A. Very -- the end stage of Stevens-Johnson,  
12 always symblephara. But symblephara can  
13 occur also in other diseases.  
14 Q. Okay. What percent certain are you that  
15 SJS and TEN can and do cause the eyeball to  
16 fuse or adhere to the eyeball?

Objection:

-402

-602

-611(c)

-701

-702

-No foundation

-Misleading

-Improper testimony  
from non-retained  
expert

Ruling: Sustained.

Objection:

-402

-611(c)

-701

-702

-No foundation

-Argumentative

-Improper testimony  
from non-retained  
expert

Ruling: Sustained.

Objection:

-402

-611(c)

-701

-702

-No foundation

-Argumentative

-Improper testimony  
from non-retained  
expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 64:19 - 64:23

Bartlett v Mutual

19 A. There is no question in my mind that this  
20 is what, what occurs in advanced  
21 Stevens-Johnson syndrome.  
22 Q. 100 percent certain?  
23 A. 100 percent certain.

Objection:  
-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 64:25 - 65:4

25 Q. So he, a second time, I am back at Doctor  
00065  
1 Papaliodis, in June 2006. He says she may  
2 -- he makes a second reference to lateral  
3 tarsorrhaphies.  
4 A. Tarsorrhaphy, yes.

Objection:  
-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 65:20 - 66:3

20 Q. Okay. And when you have a lateral  
21 tarsorrhaphy like Doctor Papaliodis is  
22 referring to, can you still see?  
23 A. Often you have to tilt your head, but you  
24 can often see.  
25 Q. Is it to protect the eye?  
00066  
1 A. Yes.  
2 Q. Why does that protect the eye, to sew it  
3 partially shut?

Objection:  
-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 66:7 - 66:17

7 A. Because in the normal position of the eye  
8 the cornea is mostly covered; and  
9 therefore, protected from evaporative  
10 damage.  
11 Q. Thank you. Let's go to now his third  
12 letter. This is again Doctor Papaliodis at  
13 Harvard, writing again to Karen's primary  
14 physician, Doctor Lane.  
15 And he again reports that she has  
16 ocular surface disease secondary to her  
17 SJS. Correct?

Objection:  
-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 66:20 - 67:3

20 A. Correct.  
21 Q. Okay. And Doctor Papaliodis copies you.  
22 And by copying you, he reports to you she  
23 is now 2400 in her right eye, which is well  
24 beyond legally blind. Correct?  
25 A. Correct.

Objection:  
-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

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00067

1 Q. And that she is counting fingers at one  
2 feet in her left eye, which is well well  
3 beyond legally blind. Correct?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 67:8 - 67:15

Objection:

-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

8 A. Correct.

9 Q. Okay. And he also reports that she has one  
10 plus conjunctival injection in both eyes,  
11 because it says OU, with progressive  
12 corneal neovascularization in both eyes,  
13 because it says OU.  
14 And can you tell us what that  
15 means?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 67:18 - 67:25

Objection:

-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

18 A. The eye is moderately red and the blood  
19 vessels are continuing to grow into the  
20 cornea.

21 Q. Okay. And then he says that he explained  
22 to Ms. Bartlett that her ocular surface  
23 disease continues to worsen despite maximal  
24 topical therapy.  
25 What does that mean, sir?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 68:3 - 68:8

Objection:

-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

3 A. One can only give so, so much of drops of  
4 various kinds to the eye. And then when  
5 you reach the end there and then there is  
6 still progression, that means that it's  
7 beyond medical treatment possibility.  
8 Q. Okay. Nonsurgical medical treatment?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 68:11 - 68:19

Objection:

-402  
-611(c)  
-701  
-702  
-No foundation  
-Argumentative  
-Improper testimony  
from non-retained  
expert  
-801  
-802

Ruling: Sustained.

11 A. Correct.

12 Q. Okay. In his next sentence Doctor  
13 Papaliodis reports to you and to Doctor  
14 Lane, "Given the damage to her limble stem  
15 cells, she is unable to adequately  
16 re-epithelialize the injured cornea and  
17 develops neovascularization/corneal  
18 scarring."  
19 What does that mean?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 68:22 - 69:19

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22 A. The -- he is referring to, to the stem  
 23 cells which are the mother cells out of the  
 24 periphery of the cornea, and they give rise  
 25 to the surface epithelium. But if they are  
 00069  
 1 damaged and we have an epithelial defect,  
 2 then that cannot be re-generated if the  
 3 stem cells are, are damaged.  
 4 That is a conjecture because one  
 5 cannot see the stem cells, but we know from  
 6 histology that under such circumstances  
 7 they are not there. But it doesn't mean  
 8 that Doctor Papaliadis has seen the cells  
 9 or to the extent of the stem cells are  
 10 damaged. He has seen the epithelial defect  
 11 and he has observed the fact that it  
 12 doesn't heal.  
 13 Q. Okay.  
 14 A. And then there is more blood vessels and  
 15 there is more scarring in the cornea.  
 16 Q. Okay. Does -- do your Harvard colleagues  
 17 here at Mass. Eye Ear frequently take  
 18 pictures of new patients, and very  
 19 frequently take pictures of their eyes?

Objection (68:22 to 72:3):

-602  
 -701  
 -702  
 -801  
 -802  
 -Speculation  
 -No foundation  
 -Improper opinion from non-  
 retained expert

Ruling: Sustained as to lines 68:22 through  
 70:3, and as to lines 70:13 through 70:25,  
 and as to lines 71:17 through 71:25.  
 Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 69:22 - 72:3

22 A. We, we do that at intervals. That is  
 23 correct.  
 24 Q. Okay. If you could just look up at the  
 25 screen, Doctor, I am going to show you some  
 00070  
 1 exhibits, some pictures to take you right  
 2 before the surgery and then we are going to  
 3 go to your first surgery.  
 4 So Exhibit 200 is a picture taken  
 5 of Karen. The date here is September 1,  
 6 2006.  
 7 And that would have been before  
 8 you first saw her, correct?  
 9 A. Could I see a better copy?  
 10 Q. Sure. Yes, sir. Huh?  
 11 A. If I could just -- yes. That's the way she  
 12 looked pre-op, yes. This was --  
 13 Q. If I could give you this one. Here, I will  
 14 hand you that whole set. Okay.  
 15 Then here is a picture of her in  
 16 November 2006, Exhibit 201. And I am going  
 17 to work up to where you are. Here is a  
 18 picture of in November 2006 again, Exhibit  
 19 202.  
 20 A. Yes.  
 21 Q. You have them all here in your hand. And  
 22 here's a fourth --  
 23 A. When was the first surgery?  
 24 Q. Your first surgery, sir, was on October 31,

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25 '06.

00071

1 A. Okay. So this was, this was in September,  
2 September 1st, this, these pictures.

3 Q. Yes, sir.

4 A. And they showed her preoperatively, red  
5 eyes, some suturing of the lids together  
6 but not very extensive, and, and dry  
7 looking, broken up reflexes and scarred  
8 corneas, and loss of lashes, and rigidity  
9 and scarring of the lids and scarring of  
10 her whole face, skin as well.

11 And then she had some lung  
12 problems also, I understand, and some other  
13 problems, urinary problems, and a number of  
14 problems --

15 Q. Yes, sir.

16 A. -- from her disease.

17 Q. What I am going to show you now two  
18 documents, sir. One is simply a list that  
19 I've tried to make accurate of all of the  
20 surgeries Karen has had here at Mass. Eye  
21 Ear, as well as the eleventh surgery that  
22 she had at Beth Israel-Deaconess. And  
23 first let me go through the first four,  
24 because you see, I have listed you as the  
25 surgeon in what I count as four procedures.

00072

1 First, let me ask you, did you  
2 operate on Karen and perform a K-Pro  
3 surgery in or about 2006?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 72:5 - 72:17

5 Foundation. Also objection to Exhibit 121.

6 A. Correct.

7 Q. Okay. And then did you do a suture removal  
8 on or about September, in September 2007?

9 A. Correct.

10 Q. Okay. And then did you do a third surgery  
11 on Karen in about March 2008, which was a  
12 second K-Pro operation on the same eye, the  
13 left eye?

14 A. Correct.

15 Q. And then did you perform a fourth operation  
16 in about June 2008, again, re-suturing the  
17 same left eye with a corneal graft?

Objection:  
-611(c)

Ruling: Overruled.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 72:19 - 73:24

19 Q. Or re-suturing the corneal graft?

20 A. Correct.

21 Q. Okay. And after your fourth eye operation  
22 on Karen, Doctor Dohlman, did you actively  
23 follow her in all her visual acuities, or  
24 did you turn over her care to Doctor

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25 Chodosh?

00073

1 A. I --

2 MR. COSGROVE: Objection.

3 Compound.

4 A. Here it says Doctor Kathryn. It should be

5 Kathryn Colby.

6 Q. Oh.

7 A. And then --

8 Q. She changed her last -- she got married or

9 --

10 A. No, no. And then the other is the

11 assistant, and that is Masselam. It is

12 wrongly spelled, married, Hatch. So the

13 second name there is only the assistant.

14 Q. Is Colby spelled C-O-L-B-Y?

15 A. Correct.

16 Q. Okay. And I am going to correct that right

17 now.

18 And you are telling me that Doctor

19 Masselam Hatch is just an assistant on that

20 surgery?

21 A. Yes. She was a fellow.

22 Q. Okay.

23 A. And her name was Masselam.

24 Q. Okay. So she is a Harvard doctor, but she

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 75:2 - 77:16

2 A. I left the country and I turned over the

3 case to, Mrs. Bartlett, Bartlett's case to

4 Doctor Chodosh. And then when I came back,

5 I asked him to continue.

6 Q. Okay. Thank you. And did you -- besides

7 discussing her case with Doctor Chodosh, as

8 you do with other patients, were you

9 actively looking at her chart after your

10 fourth surgery on her every time she was

11 here or not?

12 A. Not every time, no. But from time to time

13 I discussed her progress with Doctor

14 Chodosh.

15 Q. Thank you, sir. Exhibit No. 122 is the

16 same first pages which I corrected for

17 Doctor Colby, as well as every operative

18 report of your surgeries and others here.

19 Let's flip, therefore, to the first one,

20 please, sir.

21 A. Mm-hmm.

22 Q. Is the very first operative report, your

23 operative report of your first eye surgery

24 on Ms. Bartlett?

25 A. Correct.

00076

1 Q. Okay. And this surgery that you performed

2 was called lysis of symblephara plus, I

3 will abbreviate, Boston K-Pro, aphakic, in

4 patient's own cornea, plus ECCE, plus soft

5 contact lens in her left eye. Correct?

## Bartlett v Mutual

6 A. Correct.

7 Q. Can you explain, please explain to the jury  
8 and me what that is?

9 A. Okay. So the fusion of the conjunctiva was  
10 cut. They gray grossed but we cut them  
11 anyway to make place for the soft lens.

12 And then we trephine, meaning make a hole  
13 in the cornea.

14 Q. And is that, has this been trephined? Back  
15 to this other picture here, I am showing  
16 you on the screen, sir.

17 Has that been trephined? Is that  
18 the trephine, the cut?

19 A. No, no. This is the assembly of the donor  
20 material.

21 Q. Okay.

22 A. But in the patient, in Mrs. Bartlett's eye,  
23 in her left eye we trephined a hole eight  
24 millimeters. And then I removed the  
25 cataract through that opening. And the

00077

1 cataract is then visible, the pupil is  
2 dilated large, and one can cut out the  
3 capsule and one can press out the nucleus  
4 of the cataract and one can irrigate and  
5 aspirate the rest of the cataract. And  
6 remaining only the posterior, the back  
7 capsule has to be still there for support.  
8 And then we put in then the corneal graft  
9 with the keratoprosthesis, sutured that in  
10 place in the standard way, and then we  
11 always cover with a soft contact lens.

12 Q. Okay.

13 A. And the soft contact lens has turned out to  
14 be a tremendous boon in that it distributes  
15 the evaporative forces so well so that it  
16 protects the eye from drying.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 78:14 - 78:18

Objection:

-402  
-611(c)  
-701  
-702

-Improper opinion  
testimony from non-  
retained expert  
-Speculation  
-No foundation

Ruling: Sustained.

14 Q. What percent of the time now in recent  
15 years, the last five years, let's say, just  
16 estimate, are you using a donor from an eye  
17 bank for the cornea as opposed to the  
18 patient's own cornea with your K-Pro?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 78:21 - 78:23

Objection:

-402  
-611(c)  
-701  
-702

-Improper opinion  
testimony from non-  
retained expert  
-Speculation  
-No foundation

Ruling: Sustained.

21 A. Almost 100 percent.

22 Q. 100 percent which?

23 A. 100 percent with a donor cornea.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 81:3 - 81:6

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3 Your preoperative diagnosis for  
4 Karen was Stevens-Johnson syndrome,  
5 February 2005, plus dryness, plus glaucoma  
6 in both eyes. Correct?

Objection:  
-No foundation  
-611(c)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 81:8 - 82:11

8 A. Correct.  
9 Q. Okay. Did -- did -- before you did this  
10 operation, did you see Karen Bartlett a  
11 number of times to evaluate her?  
12 A. If you could --  
13 Q. Before you did this operation, did you see  
14 Karen Bartlett a number of times and  
15 personally evaluate her?  
16 A. I personally evaluated her. I don't  
17 remember exactly how many times. Probably  
18 only once.  
19 Q. Okay. And is that common in your surgical  
20 history that you might only evaluate a  
21 person once before surgery?  
22 A. Yes.  
23 Q. Okay.  
24 A. That is standard, yes. Let me tell you  
25 this. We have a big work up. We send them  
00082

1 to ultrasound. We send them to  
2 photography. We send them to blood tests,  
3 and the informed consents. And all the  
4 testing is all from top to bottom so we do  
5 that in one sweep.  
6 Q. Would it be accurate and fair that  
7 generally, before a SJS TEN patient comes  
8 to you for evaluation, Doctor Dohlman, that  
9 many Harvard Mass. Eye Ear physicians have  
10 already evaluated them and believed going  
11 to you is the appropriate course?

Objection (82:6 to  
82:11): 402, 602, 611  
(c), 701, 702, Improper  
opinion testimony from  
non-retained expert,  
No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 82:14 - 82:22

14 A. Often. But many times they come from the  
15 outside and they have been evaluated or  
16 followed for a long time by the physician,  
17 referring physician there.  
18 Q. Yes. Either way, whether they come from  
19 outside Harvard or within Harvard, before  
20 they get to you, a number of physicians  
21 have evaluated them and believe they need  
22 to be considered for Boston K-Pro surgery?

Objection:  
-402  
-602  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 83:1 - 83:24

1 A. Yes.

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2 Q. Okay. When you evaluated Karen, of course,  
3 did you review a lot of the materials that  
4 were done by your colleague physicians here  
5 at Harvard?  
6 A. I believe she had been, had been seen also,  
7 well, by Doctor Papaliadis, but also by  
8 Doctor Foster, I believe.  
9 Q. Okay. Yes, sir. And Doctor Foster is who,  
10 please?  
11 A. Is what?  
12 Q. And Doctor Foster is who, please?  
13 A. He is a senior clinical professor at  
14 Harvard and perhaps the ultimate expert on  
15 inflammatory diseases of the eye.  
16 Q. Okay. Is SJS and TEN an inflammatory  
17 disease of the eye?  
18 A. Yes.  
19 Q. Okay. When you diagnose -- when your  
20 pre-op diagnosis said Stevens-Johnson  
21 syndrome, had you at that time made a  
22 conclusion as to whether or not  
23 Stevens-Johnson syndrome was the cause of  
24 Karen Bartlett's legal blindness?

Objection:  
-403  
-602  
-Speculative  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 84:2 - 84:8

2 A. There was no reason whatsoever to doubt  
3 that from the history.  
4 Q. Okay. What percent certain were you when  
5 you did this operation that Karen's legal  
6 blindness that you were operating on in the  
7 left eye was caused by Stevens-Johnson  
8 syndrome or TEN?

Objection:  
-403

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 84:11 - 84:22

11 A. Well, I was absolutely certain. I had no,  
12 no, no other evidence or suggestion that it  
13 could be caused by anything else.  
14 Q. Okay.  
15 A. And I cannot -- it's so typical for  
16 Stevens-Johnson, you cannot mistake it.  
17 Q. Okay.  
18 A. It is absolute typical.  
19 Q. Were you 100 percent certain that Karen's  
20 legal blindness you were operating on in  
21 her left eye was caused by Stevens-Johnson  
22 syndrome?

Objection:  
-403  
-611(c)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 84:25 - 85:4

25 A. Yes.  
00085

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1 Q. Were you also 100 percent certain that her  
2 legal blindness in her right eye that you  
3 at this time did not operate on was also  
4 caused by her Stevens-Johnson syndrome?

Objection:  
-403  
-611(c)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 85:7 - 85:9

Objection:  
-611(c)

Ruling: Overruled.

7 A. Yes.  
8 Q. Okay. And in this surgery you opted to use  
9 Karen's own cornea. Correct?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 85:11 - 85:17

Objection:  
-611(c)

Ruling: Overruled (through line 86:8).

11 Q. You see your third paragraph there.  
12 (Witness perusing document.)  
13 A. Yes. I see that now.  
14 Q. Okay. And please read through your  
15 operative report to the extent you need to  
16 and tell us why you made that decision,  
17 sir.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 86:2 - 86:23

2 A. I see that now. I had forgotten that.  
3 But, but I must have thought at that time  
4 that the cornea was sufficiently full and  
5 that we had preformed blood vessels so to  
6 speak. These blood vessels in the cornea  
7 can re, re, easily be re-canalized and the  
8 whole healing be speeded up that way.  
9 Healing is, in the autoimmune  
10 disease, Stevens-Johnson, is a problem,  
11 especially since we have to give  
12 corticosteroids, prnisolone, to suppress  
13 postoperative inflammation, and that cuts  
14 down the wound healing rate as well. So  
15 starting out with blood vessels speeds up  
16 healing. We do that occasionally.  
17 Q. Yes, sir. And before we take a break, one  
18 word in statistics, and we will come back  
19 in your papers, but generally speaking, is  
20 it common, Doctor Dohlman, that when a  
21 patient gets a K-Pro surgery on an SJS TEN  
22 eye that they will likely need more than  
23 one surgery down the road?

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-611(c)

Ruling: Sustained as to lines 86:9 through  
87:3. Otherwise overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 87:2 - 87:21

2 A. That is just the problem.  
3 Q. Okay.

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4 A. The problem is that in all autoimmune  
 5 diseases the retention of the artificial  
 6 cornea, the device, is almost 100 percent.  
 7 There is no ulceration. There is no  
 8 melting of the tissue and so on.  
 9 But, but this small important  
 10 group of autoimmune diseases, and  
 11 Stevens-Johnson is the worst, can start  
 12 after a year or two or three years and  
 13 begin to melt down and perforate here and  
 14 melt down next to the stem and leak and so  
 15 on.  
 16 Q. Okay.  
 17 A. And then we have a complication that can  
 18 occur in those cases because of the leak.  
 19 No infection anymore with our prophylactic  
 20 antibiotics schedule, but we can get  
 21 retinal detachment.

Objection:  
 -402  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -611(c)

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 88:8 - 88:25

8 Q. Back to your 2008 publication, Doctor  
 9 Dohlman.  
 10 A. Mm-hmm.  
 11 Q. Your first sentence reads, "Stevens-Johnson  
 12 syndrome often causes severe ocular surface  
 13 disease and impairment of vision."  
 14 And the very last sentence in that  
 15 one year old publication reads, "Patients  
 16 with SJS who elect to have the procedure,"  
 17 that's a reference to the Boston K-Pro,  
 18 correct?  
 19 A. Yes.  
 20 Q. Okay. "Patients with SJS who elect to have  
 21 the procedure must be prepared for a  
 22 lifelong follow-up with an experienced  
 23 K-Pro surgeon."  
 24 Is this that what you published,  
 25 sir?

Objection:  
 -403  
 -701  
 -702  
 -611(c)  
 -Argumentative  
 -Improper publication  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 89:5 - 89:8

5 A. That is what we published and this is what  
 6 I believe.  
 7 Q. Tell us why it is -- tell us what it is  
 8 true, please, Doctor.

Objection (89:5 to  
 89:12):  
 -701  
 -702  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 89:10 - 89:12

10 Q. Tell us why it is true, please, Doctor.  
 11 A. Why it is true?  
 12 Q. Yes, sir.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 89:15 - 89:24

15 A. Because of -- it is true because of the  
16 risk of tissue melt, handling that with  
17 medication, with contact lenses and also  
18 with surgery, glue and so on, in these  
19 cases which is so frequent in the worst  
20 cases.  
21 Q. All right. You mentioned, Doctor Dohlman,  
22 you will be 87 years young tomorrow.  
23 Is Doctor Chodosh such an  
24 experienced K-Pro surgeon?

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 90:2 - 90:12

2 A. He has less experience than me. He is in  
3 his early 50's. But he is, has  
4 considerable experience already when he was  
5 down in Oklahoma, and now even more. And  
6 he is taking over this category of patients  
7 and working with Doctor Papaliodis on the  
8 future treatments.  
9 Q. Fair to say that, to your knowledge, you  
10 are the most or certainly one of the most  
11 experienced K-Pro surgeons in the world?  
12 A. I am probably --

Objection:  
-402  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 90:17 - 90:23

17 A. It is not speculation. I am the most  
18 experienced.  
19 Q. Okay.  
20 A. I am just kidding.  
21 Q. You're not kidding about being the most  
22 experienced?  
23 A. No, no. I am not kidding about that.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 90:25 - 91:5

25 Q. Thank you, sir. And in fact, you did, and  
00091  
1 let's just go through them here, and what I  
2 put before you, sir, after your first  
3 surgery in October '06, you did a second  
4 surgery on Karen in September '07.  
5 Correct, sir?

Objection:  
-611(c)  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 91:7 - 91:13

Bartlett v Mutual

7 Q. Just flip those pages there in your right  
8 hand. Yes.  
9 A. Correct, yes.  
10 Q. And your second surgery was examination  
11 under anesthesia plus suture removal, plus  
12 sutured canthotomy of her left eye.  
13 Correct?

Objection:  
-611(c)  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 91:18 - 91:20

18 A. That is correct.  
19 Q. Okay. Tell us what that surgery is,  
20 please, sir, why you did it.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 91:23 - 93:10

23 A. During one of the visits just before that,  
24 I noticed that she had a leak and she had a  
25 fistula, meaning that there was an opening  
00092  
1 in the cornea, a thinning, melting and  
2 thinning and digestion of the tissue and a  
3 leak and fluid came out.  
4 This can be very easily  
5 demonstrated by a dye that is diluted by  
6 the fluid that leaks out, and the fact that  
7 the pressure inside the eye is close to  
8 zero. No question about it.  
9 So I took her to the operating  
10 room and was prepared to repair that. But  
11 when she was on the table, I found that the  
12 leak had stopped, and it had probably  
13 stopped because I had stopped previously  
14 just a couple of days beforehand the  
15 steroid treatment to the cornea,  
16 prinisilone. And that prinisilone keeps  
17 the wound healing down, and some  
18 Stevens-Johnson patients are very sensitive  
19 to that. So I had stopped that and then,  
20 voila, on the table no more leak. The  
21 fistula was closed. So the only thing I  
22 did was do a few minor things to take out a  
23 couple of sutures and put the -- yes, I  
24 just repaired everything that I had opened  
25 just to be able to see it.

00093

1 Q. Okay. And what is a canthotomy?  
2 A. A canthotomy is when the lids are too close  
3 or the opening is too small to really be  
4 able to work on the eye, and we had to make  
5 a cut out into the periphery.  
6 Q. Okay.  
7 A. And then I suture that back at the end.  
8 Q. Thank you. Your third operation on Karen  
9 was, oh, I guess, about six months later in  
10 March of 2008. Correct, sir?

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---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 93:12 - 94:23

12 A. Correct.  
13 Q. Okay. And this third surgery was a Boston  
14 K-Pro. This would be the second one,  
15 correct, sir?  
16 A. Correct.  
17 Q. And fresh corneal graft plus anterior  
18 vitrectomy, plus soft contact lens OS.  
19 Let's start with the anterior  
20 vitrectomy. Tell us what that is, please,  
21 sir.  
22 A. Anterior vitrectomy is when the vitreous is  
23 cloudy because of collapse and a leak that  
24 has been there for a short time before.  
25 And then we remove the jelly-like vitreous,  
00094  
1 front part of the vitreous, with a  
2 vitrector, which is a cutting suction  
3 little pipe, and the light pipe. We shine  
4 down in with the light pipe and then we go  
5 in with this device that has a little  
6 guillotine action inside an opening and at  
7 the same time it sucks out what is cut.  
8 And so one can cut that jelly, the front  
9 portion of the jelly, which I did.  
10 Q. Okay. And you said the preoperative  
11 diagnosis was Stevens-Johnson syndrome  
12 status post K-Pro, left eye with leak.  
13 What does that mean, sir?  
14 A. Are you talking about the March --  
15 Q. March '08, yes, sir.  
16 A. Yes. Well, just as it says, we have had,  
17 had a K-Pro before, but that was a massive  
18 leak and I felt that we had to do the whole  
19 thing over again.  
20 Q. And do any of these pictures help you  
21 describe what a leak is and why did  
22 surgery, this, a second K-Pro was needed  
23 for Karen?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 95:2 - 95:6

2 A. I would just have to look here exactly  
3 where the leak was. Sometimes it's around  
4 the stem, sometimes it's further out. But  
5 it would take me only a second. That was  
6 March. Okay. Around the stem.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 95:13 - 95:15

13 Q. And sir, the jury can see what I am

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14 pointing at so you tell me where to point.  
15 A. Okay. All right.

Objection: 402, 701, 702,  
Improper opinion testimony  
from non-retained expert,  
No foundation, Testimony  
not based on document that  
is fair and accurate  
representation of patient  
plaintiff

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 95:22 - 96:18

22 A. All this is the cornea. All this here is  
23 the cornea.  
24 Here is the corneal graft with the  
25 keratoprosthesis. And here is the central  
00096  
1 stem. It is only three, three and a half  
2 millimeters in diameter.  
3 And this is where you see through.  
4 And --  
5 Q. I am going to turn off the light so that  
6 you can see better. Okay.  
7 Go ahead, Doctor?  
8 A. So here is now the three-millimeter stem.  
9 And this is crystal clear, nothing can  
10 happen to that and you see through that.  
11 But here is now the tissue, the corneal  
12 tissue outside here holding the device.  
13 And here, the tissue had started to melt  
14 away on the just outside the stem, not in  
15 this case, but this is what happened in, in  
16 Mrs. Bartlett's case. So that it started  
17 to leak around here and then the whole  
18 thing had to be repeated.

Objection: 402, 701, 702,  
Improper opinion testimony  
from non-retained expert,  
No foundation, Testimony  
not based on document that  
is fair and accurate  
representation of patient  
plaintiff

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 97:20 - 97:22

20 Q. And how common, Doctor Dohlman, are these  
21 leaks which require a second operation like  
22 the second K-Pro you did on Karen?

Objection (97:20 to  
98:2):

-402  
-701  
-702

-Improper opinion  
testimony from non-  
retained expert  
-No foundation  
-Speculation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 97:25 - 98:11

25 A. Unfortunately, in very severe  
00098

1 Stevens-Johnson, which this was, it is  
2 quite common.

3 Q. Okay.

4 A. And she disappointed us in that sense that  
5 she was so prone to meltdown and necrosis  
6 and leak, and it was not the last time.

7 Q. We have not addressed that. We talked  
8 about that SJS and TEN are one of the worst  
9 preoperative diagnoses for K-Pro. We  
10 hadn't talked about how severe Karen's was,  
11 and you just brought that up.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 98:15 - 98:19

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15 severe Karen's case was.  
 16 MR. COSGROVE: Objection. Form.  
 17 Foundation.  
 18 A. She behaved like one of the worst we've  
 19 had.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 98:24 - 99:2

24 Why is it true in your evaluation  
 25 and operations that Karen was one of the  
 00099  
 1 worst blindness caused by SJS TEN cases  
 2 you've had?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 99:6 - 100:6

6 A. Because of the repeated and frequent  
 7 episodes of disintegration, disintegration  
 8 of the tissue, the corneal tissue around  
 9 the keratoprosthesis resulting in  
 10 perforations and leaks and risks to the  
 11 inside of the eye.  
 12 Q. Okay.  
 13 A. It is impossible to -- you can ask why do  
 14 we do this at all with these complications.  
 15 But we don't know beforehand.  
 16 After all, in our latest 16 cases,  
 17 we had 50 percent, 50 percent, 50 percent  
 18 who did well after five years and 50  
 19 percent did not. And of course, we  
 20 explained the risks and the bad prognosis  
 21 in general. But one can still not predict  
 22 how an eye will behave after surgery.  
 23 Q. And on the point you just made, you raised  
 24 the question why do we do this at all. You  
 25 have, in fact, published on that.  
 00100  
 1 You published a paper called "Do  
 2 We Do Keratoplasty? Do We Do K-Pro? Or Do  
 3 We Do Nothing At All?" And then the title  
 4 of the paper went on to say an examination  
 5 of, I will paraphrase, the overlapping  
 6 indications for surgeries. Correct?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 100:9 - 101:2

Objection (99:23 to 101:2):  
 -402  
 -701  
 -702  
 -Improper opinion testimony  
 from non-retained expert  
 -Speculation  
 -611(c)

Ruling: Sustained.

9 A. Yes. And these indications are the, the  
 10 borders between these indications will  
 11 probably forever be fluid as  
 12 keratoprostheses develops further, which

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13 undoubtedly they will, it is going very  
14 well, in general, there will be more and  
15 more of them. And it will be less and less  
16 a standard corneal transplantation and  
17 maybe less also of doing nothing in the  
18 severe cases as an example. We have the  
19 demand for our Boston Keratoprosthesis is  
20 going up like this, and which shows that it  
21 does work in the hands of surgeons around  
22 the world and they are interested in doing  
23 more. So this is a constantly perennial is  
24 shifting and in the long run there will be  
25 some bright young people coming up with

00101

1 something much better and that is  
2 development in medicine.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 101:6 - 101:9

6 Q. Doctor, your fourth surgery on Karen was  
7 what, March, April, May, June, about four  
8 months after your third operation on  
9 Karen's left eye. Correct, sir?

Objection:  
-602  
-611(c)  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 101, Line 11

11 A. In June.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 101:20 - 102:9

20 Q. Hold on. And this fourth eye surgery you  
21 did on Karen's left eye was about four  
22 months after your third eye surgery on her  
23 left eye. Correct, sir?

24 A. Correct.

25 Q. Okay. What was this fourth eye operation  
00102

1 you performed on Karen Bartlett?

2 A. Again, I was worried about a leak because  
3 the pressure of the eye was very low, it  
4 was very soft. And but I couldn't find any  
5 leak. But the lower wound margin of the  
6 graft, the corneal graft had poor healing;  
7 so therefore, I put in a string of sutures  
8 to hold that together. And it worked well  
9 for a while.

Objection (101:20 to  
101:24):  
-No foundation  
-602  
-611(c)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 102:14 - 102:19

14 Q. Okay. And generally, is it your present

Bartlett v Mutual

15 understanding, sir, that Karen Bartlett as  
16 we sit here now, just about a year and  
17 three or four months after your fourth  
18 surgery, has now had four K-Pro surgeries  
19 in her left eye?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 102:22 - 103:7

22 A. She had one in the right eye.  
23 Q. She had a standard corneal transplant in  
24 the right eye. I am just sticking with the  
25 left eye right now.  
00103  
1 A. Oh, okay.  
2 Q. The question is is it your understanding  
3 now --  
4 A. Yes. That is my understanding, yes.  
5 Q. Thanks. Okay. And there is always in K-Pro  
6 surgeries, there is always lead surgeons  
7 and assistant surgeons. Correct?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 103:10 - 103:13

10 A. Correct.  
11 Q. And for all four of the eye operations we  
12 have discussed so far, you were the lead  
13 surgeon for Karen Bartlett. Correct?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 103, Line 17

17 A. Yes.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 104:5 - 104:9

5 Q. Doctor Dohlman, in terms of Karen and  
6 through your four surgeries of her and to  
7 the extent you have knowledge beyond your  
8 four surgeries, why has she required so  
9 many?

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 104:12 - 105:5

12 A. This is just a fundamental question that we  
13 still do not understand. Why do the  
14 autoimmune diseases behave so badly, for  
15 lack of a better word, compared to  
16 non-autoimmune diseases. And there is

Bartlett v Mutual

17 something in the tissue that triggers the  
18 breakdown and melting away, and disease and  
19 chronic inflammation that we do not  
20 understand.

21 We are here mounting a rather  
22 massive research project just on this  
23 issue. And Doctor Chodosh, Doctor  
24 Papaliodis, Doctor Foster, myself and other  
25 people, we are particularly interested in

00105

1 Stevens-Johnson and Pemphigoid and what we  
2 can do by --

3 COURT REPORTER: And what?

4 THE WITNESS: Pemphigoid,

5 P-E-M-P-H-I-G-O-I-D, I guess.

Objection (104:20):  
-Move to strike as  
non-responsive after  
"understand"

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 105:10 - 105:14

10 Q. And you've published on Stevens-Johnson  
11 syndrome and that other one, Pemphigoid,  
12 you just referred to, in relation to K-Pro.  
13 Correct?

14 A. Yes.

Objection:  
-402  
-611(c)  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 105:18 - 105:21

18 A. Yes.

19 Q. And we will get to it later. But you are  
20 also a member of the Boston K-Pro Study  
21 Group, correct?

Objection:  
-402  
-611(c)  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 105, Line 23

23 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 106, Line 16

Q. Yes, sir.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 107:1 - 107:7

1 This picture is taken about four  
2 and a half months after your first surgery  
3 in October '06. And it is taken March 14,  
4 '07. Now, with those -- now please tell us  
5 what is going on with Karen's eyes here in  
6 these pictures.

Bartlett v Mutual

7 A. March --

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 107, Line 10

10 A. No. Everything was fine then.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 107:13 - 109:12

13 A. There was no, there was no problem at that  
14 stage.

15 Q. Thank you, sir. Now, please go to Exhibit  
16 206, the next page.

17 MR. JENSEN: Thanks.

18 Q. And that is taken on April 16, 2007, so  
19 about seven months after your first  
20 surgery.

21 Tell us what we see here. First  
22 of all, is this Karen's left eye on Exhibit  
23 206?

24 A. We saw March, March '07. We looked at  
25 that.

00108

1 Q. Yes, sir.

2 A. That was fine. The next is May. Are you  
3 interested in that or --

4 Q. Yes, sir. Yes. Tell us what is going on  
5 there, please.

6 A. The soft lens seemed to be removed. And we  
7 have an epithelial defect which is stained  
8 by a green dye.

9 Q. Okay.

10 A. That means that the epithelium is, is off  
11 because of the inflammation, and it is set  
12 up for further melt of the underlying  
13 tissue.

14 Q. These pictures are numbered two through  
15 ten. Tell us which picture I should focus  
16 in on so you can show us, if you can, where  
17 the epithelial defect is.

18 A. We can say number six.

19 Q. Okay. I will zoom in on number six.

20 And tell us what we can see there  
21 from Karen's picture of her left eye in  
22 number six?

23 A. In other words, this area here which is  
24 stained by a green dye, this here, and also  
25 a little bit here. And that dye stains the

00109

1 underlying tissue if there is no epithelium  
2 covering, so that means that there is an  
3 epithelial defect. And that means that the  
4 underlying tissue is in jeopardy and can  
5 melt down, actually, at any time.

6 Q. What is a corneal melt?

7 A. Well, it's when the tissue just simply  
8 fades away, it disappears.

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9 Q. Did Karen Bartlett have a corneal melt?

10 A. Yes, she has had several.

11 Q. Did Stevens-Johnson syndrome cause Karen

12 Bartlett's several corneal melts?

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 109, Line 15

15 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 109:18 - 109:20

Objection (109:11 to 110:8):

-611(c)

-701

-702

-No foundation

-Duplicative

-Improper opinion testimony

from non-retained expert

Ruling: Overruled.

18 Q. What percent certain are you that Karen

19 Bartlett's several corneal melts were

20 caused by Stevens-Johnson syndrome?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 109:22 - 110:6

22 A. The reason is that this is how

23 Stevens-Johnson patients behave in contrast

24 to all others.

25 Q. Okay.

00110

1 A. With 95 percent or 99 percent of the world

2 population.

3 Q. Are you 100 percent certain that Karen

4 Bartlett's several corneal melts were as a

5 result and caused by her Stevens-Johnson

6 SJS TEN?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 110:8 - 110:24

8 A. Yes, I am. 100 percent.

9 Q. Now, so when you say a corneal melt is the

10 tissue, tell me if I have it right, the

11 tissue is disappearing?

12 A. Yes.

13 Q. Okay.

14 A. It melts away.

15 Q. And what tissue is melting away or

16 disappearing?

17 A. On the surface, from the surface because

18 the enzymes are regulated, up regulated for

19 some reason and they digest away the

20 tissue. The corneal tissue becomes thinner

21 and thinner and then we can have a

22 perforation.

23 Q. Okay. Is there a relationship between

24 epithelial defect and corneal melt or not?

Objection (110:9 to 110:24):

-611(c)

-701

-702

-No foundation

-Improper opinion

testimony from non-

retained expert

Ruling: Overruled.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 111:3 - 111:15

3 A. Definitely. There can be no corneal melt  
 4 without epithelial defect.  
 5 Q. Okay. Let me ask you, were you treating  
 6 Karen's epithelial defect and Karen's  
 7 corneal melt, melts?  
 8 A. I don't remember offhand the treatment.  
 9 But normally, we use a small amount of  
 10 steroids in addition to the antibiotics to  
 11 protect from infection, plus a soft contact  
 12 lens.  
 13 Q. Okay.  
 14 A. And try to protect these epithelial  
 15 defects. They take a long time to heal.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 111:23 - 112:9

23 Q. Is the very reason for the Boston K-Pro  
 24 surgeries you did an attempt to save  
 25 Karen's vision?  
 00112  
 1 A. Well, of course. Yes.  
 2 Q. Okay. Yes, sir. And now let me ask you,  
 3 based upon your care and treatment of her,  
 4 let's hypothetically assume that you did  
 5 not do these four surgeries for a moment,  
 6 Doctor Dohlman. If you hypothetically had  
 7 not done them, and let's say she never got  
 8 any surgeries on her left eye at all, what  
 9 would be her vision today --

Objection (111:23 to  
 112:1):  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 112, Line 11

11 Q. -- in her lifetime?

Objection (112:2 to  
 113:9):  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Speculation  
 -Argumentative  
 -Assumes facts not in  
 evidence

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 112:15 - 113:4

15 A. I can, I can say with certainty that we  
 16 would be at the most light perception only,  
 17 possibly no light perception.  
 18 Q. Okay.  
 19 A. One cannot leave an open eye for any length  
 20 of time without the severe risk of retinal  
 21 detachment and destruction of the eye,  
 22 collapse of the eye.  
 23 Q. Let me see if I have it right.  
 24 You are certain that had she never  
 25 had operations on her left eye, her vision  
 00113

Bartlett v Mutual

- 1 would have been worse than counting  
 2 fingers, worse than hand motion, and light  
 3 perception at best?  
 4 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 113:8 - 113:15

8 Q. Your answer?

9 A. Yes.

- 10 Q. Okay. Now, let's go to the next picture,  
 11 sir. It is Exhibit 207. And it is taken  
 12 on nine, on September 12th of 2007.  
 13 And that is about nine days before  
 14 your second surgery. Tell us what we see  
 15 here, sir, please.

Objection (113:10 to  
 113:19):  
 -No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 113:18 - 116:6

- 18 A. I see a blanching of the corneal tissue  
 19 around the keratoprosthesis.  
 20 Q. Which image should I hone in on, please.  
 21 Give me a number.

22 A. Yes.

23 Q. Which number?

- 24 A. For instance, any of them, for instance,  
 25 six.

00114

- 1 Q. Okay. And what do you see here about nine  
 2 days before your second operation, please,  
 3 sir?

- 4 A. And there is, there is a blanching of the  
 5 tissue around here. And that blanching  
 6 means that there are no, no blood vessels.  
 7 There are blood vessels here, there are  
 8 blood vessels out here, but there are no  
 9 blood vessels here. And this means that  
 10 the whole tissue is necrotizing,  
 11 necrotizing meaning that it's sort of  
 12 nonviable. There are no cells. It  
 13 doesn't, it doesn't live. It just sits  
 14 there waiting to be, fall apart,  
 15 essentially.

16 Q. Does necrosis mean --

17 A. It was alarming.

18 Q. Does necrosis mean death?

19 A. Yes.

20 Q. Does that --

21 A. Cell death and breakdown of the tissue.

22 Q. When you said this necrotizing process was  
 23 alarming, what do you mean?

24 A. That necrosis, meaning that it's nonviable,  
 25 not vascularized, there are no blood

00115

- 1 vessels and no life in the tissue. And it  
 2 is being digested away, melted away by  
 3 enzymes. And it is a predictably downhill

Objection (114:1 to  
 114:15):  
 -No foundation

Ruling: Overruled.

Objection (114:16 to 116:6):  
 -No foundation  
 -611(c)

Ruling: Overruled.

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4 course after that.  
5 And that must have been the reason  
6 why I decided to do the whole thing over  
7 again, including the donor cornea.  
8 Q. Okay. And show us again, please, visually  
9 where this blanching is or this evidence of  
10 the dying process or the necrotizing  
11 process you told us about, please.  
12 A. So everything that is white here means that  
13 there are no blood vessels in it. And, and  
14 that is a sitting duck for just total  
15 disintegrations sooner or later.  
16 Q. Now, I think I see a ring right there.  
17 Isn't that the -- do I see the ring?  
18 A. No. That, that is the edge of the front  
19 plate.  
20 Q. Okay.  
21 A. It is -- I don't -- I don't think that you  
22 see the ring.  
23 Q. I see. So that circle that we see there is  
24 the edge of the front plate of her K-Pro?  
25 A. Yes.  
00116  
1 Q. Thank you, sir. Now, let's go to Exhibit  
2 208. And this, Exhibit 208, was done on  
3 September 19, 2007, which is two days  
4 before your second eye operation.  
5 Tell us what we see here, please,  
6 sir.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 116:18 - 119:20

18 Q. Yes.  
19 A. September '07, the 19th. She had a  
20 pressure --  
21 Q. Okay.  
22 A. -- in the eye.  
23 Q. Tell us what date you are talking about  
24 now, please, sir.  
25 A. Well, for instance, three. Number three  
00117  
1 here.  
2 Q. Okay. And tell us on September 19th --  
3 A. Here, September 19th.  
4 Q. Okay. What --  
5 A. It is not so much a question of what we see  
6 here, which hasn't changed much.  
7 Q. Okay.  
8 A. But the fact that she has had episodes of  
9 low pressure, which she noticed herself.  
10 And I measured the pressure that was close  
11 to zero and that was since that morning.  
12 And that was the fifth episode of collapse  
13 of the eye, meaning leak; and therefore,  
14 the pressure goes down.  
15 Q. Okay.  
16 A. So and the Sidell, which is a test for  
17 leak, was positive. And this actually  
18 happened to be not around the stem this

Bartlett v Mutual

19 time, but out in the periphery, the  
20 periphery of the graft.

21 Q. Okay.

22 A. And therefore, I decided that I had to do  
23 the whole thing again. It was just too  
24 dangerous. She had had five episodes of  
25 very soft eye, meaning leak.

00118

1 Q. Okay. Explain to us what you meant by five  
2 episodes of either low pressure in the eye  
3 or leak in the eye.

4 What does that mean?

5 A. Well, she noticed herself, she could feel  
6 the pressure. And when the vision dims,  
7 then she realizes that something is not  
8 right; so then she palpates the globe and  
9 finds that it is zero, totally without  
10 pressure. And that has only one meaning  
11 and that is there has been a leak. And but  
12 it has fluctuated evidently, but she had  
13 five such episodes. And during those  
14 episodes, and now it's we're talking about  
15 a melt out in a more periphery of the  
16 graft, and epithelium can wander in and  
17 cause an epithelialized fistula and then  
18 you are in for endless trouble.

19 Q. Okay. Is that what occurred? Did she have  
20 an epithelialized, epithelialized fistula?

21 A. Most, most likely.

22 Q. Okay. Why -- strike that.

23 Is the fact that you do a Boston  
24 K-Pro commonly result in pressure going  
25 down in the eye?

00119

1 MR. COSGROVE: Objection. Form.  
2 Foundation. Calls for expert testimony.  
3 Beyond the scope of --

4 MR. JENSEN: Better question.

5 Q. Is pressure going down in the eye a common  
6 complication after a Boston K-Pro surgery?

7 MR. COSGROVE: Same objection.

8 A. No, not at all. As a rule, the other  
9 categories, it rarely happens, very rarely.

10 But in the autoimmune diseases,  
11 Stevens-Johnson, entirely different.

12 Q. Okay. And is Stevens-Johnson syndrome -- I  
13 will ask you the question again.

14 In SJS eyes, is pressure going  
15 down a common complication after a Boston  
16 K-Pro surgery?

17 MR. COSGROVE: Same objection.

18 A. Yes.

19 Q. Why?

20 A. I wish I knew.

Objection (119:14 to  
119:20):  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 116:19 - 118:21

19 A. September '07, the 19th. She had a  
20 pressure --

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21 Q. Okay.  
 22 A. -- in the eye.  
 23 Q. Tell us what date you are talking about  
 24 now, please, sir.  
 25 A. Well, for instance, three. Number three  
 00117  
 1 here.  
 2 Q. Okay. And tell us on September 19th --  
 3 A. Here, September 19th.  
 4 Q. Okay. What --  
 5 A. It is not so much a question of what we see  
 6 here, which hasn't changed much.  
 7 Q. Okay.  
 8 A. But the fact that she has had episodes of  
 9 low pressure, which she noticed herself.  
 10 And I measured the pressure that was close  
 11 to zero and that was since that morning.  
 12 And that was the fifth episode of collapse  
 13 of the eye, meaning leak; and therefore,  
 14 the pressure goes down.  
 15 Q. Okay.  
 16 A. So and the Sidell, which is a test for  
 17 leak, was positive. And this actually  
 18 happened to be not around the stem this  
 19 time, but out in the periphery, the  
 20 periphery of the graft.  
 21 Q. Okay.  
 22 A. And therefore, I decided that I had to do  
 23 the whole thing again. It was just too  
 24 dangerous. She had had five episodes of  
 25 very soft eye, meaning leak.  
 00118  
 1 Q. Okay. Explain to us what you meant by five  
 2 episodes of either low pressure in the eye  
 3 or leak in the eye.  
 4 What does that mean?  
 5 A. Well, she noticed herself, she could feel  
 6 the pressure. And when the vision dims,  
 7 then she realizes that something is not  
 8 right; so then she palpates the globe and  
 9 finds that it is zero, totally without  
 10 pressure. And that has only one meaning  
 11 and that is there has been a leak. And but  
 12 it has fluctuated evidently, but she had  
 13 five such episodes. And during those  
 14 episodes, and now it's we're talking about  
 15 a melt out in a more periphery of the  
 16 graft, and epithelium can wander in and  
 17 cause an epithelialized fistula and then  
 18 you are in for endless trouble.  
 19 Q. Okay. Is that what occurred? Did she have  
 20 an epithelialized, epithelialized fistula?  
 21 A. Most, most likely.

---

Witness\_ Claes Dohlman, M.D., Ph.D. -: 119:14 - 119:16

14 In SJS eyes, is pressure going  
 15 down a common complication after a Boston  
 16 K-Pro surgery?

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 121:1 - 121:4

1 Q. When approximately, in relation to your  
2 four surgeries that is, were these five  
3 episodes of Karen, of that pressure going  
4 down in Karen's eyes?

Objection (121:1 to  
121:8):  
-611(c)  
-Argumentative  
-Assumes facts not in  
evidence  
-Speculation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 121:7 - 121:8

7 A. Just before the surgery on September 21,  
8 '07.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 121:11 - 121:15

11 What were the most biggest  
12 problems with Karen's eyes that led to this  
13 second surgery? Was it low pressure? Was  
14 it this death or necrotizing process, or  
15 what was it?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 121:18 - 122:17

18 A. The low pressure means that the eye is  
19 open. There is a leak to the outside. And  
20 if that is left alone, sooner or later in  
21 these cases we would end up with an  
22 irreparable retinal detachment and loss of  
23 the eye, loss of vision, possibly light  
24 perception remaining but not more.

25 Q. Okay. Then you did the surgery two days  
00122

1 after this 208. Let's go to 209. And this  
2 is in January of 2008, so about four months  
3 after your second surgery.

4 And tell us what we see there,  
5 please, Doctor.

6 A. It looks pretty good to me. There is a  
7 little blanching.

8 Q. Which image should I focus on, please, sir?

9 A. You can say six.

10 Q. Okay. And tell us what we see there. I  
11 will turn the light off. Hold on.

12 A. It is a little blanched here where you see  
13 the white. There are no vessels and no --  
14 the normal redness that you can see up  
15 here, and that is possibly a little  
16 disconcerting. But I think she did well at  
17 that time.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 123:4 - 123:10

4 Q. And this would have been taken two days  
5 before your second K-Pro on March 26th,  
6 sir. So this is two days before your third  
7 operation.  
8 A. Correct.  
9 Q. Tell me what you see there that is  
10 relevant, sir, please.

Objection:  
-611(c)  
-Argumentative  
-Assumes facts not in  
evidence  
-No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 123:13 - 125:23

13 A. It is not so much what one can see because  
14 one really cannot see it well on the  
15 photos. But she did have a clear melt  
16 around the stem this time and --  
17 Q. Understanding you can't see it well in the  
18 photos, just kind of give us an idea of  
19 what this is in the eye and which picture  
20 we should look at, please, sir.  
21 A. We can look at seven, for instance.  
22 Q. Okay.  
23 A. And I have a feeling that there is around  
24 here, around here that tissue has  
25 disappeared; and therefore, there is a  
00124

1 leak.  
2 Q. Is that a corneal melt, sir?  
3 A. I think so.  
4 Q. Okay.  
5 A. Next to the stem.  
6 Q. Yes, sir.  
7 A. And that left us with no other option than  
8 to repeat it.  
9 Q. Okay.  
10 A. Repeat the procedure.  
11 Q. Your first post-op picture after your third  
12 eye surgery is Exhibit 211, and it is dated  
13 in April of '08, which is about a month  
14 post-op.  
15 Please tell us what we see there,  
16 sir.  
17 A. Here we look at a different appearance  
18 because at that time we had solid evidence  
19 that titanium backplate was better than a  
20 plastic backplate.  
21 Q. Is that what we see on the picture, a  
22 titanium backplate, sir?  
23 A. Yes.  
24 Q. Okay. This is still her left eye?  
25 A. Still the left eye.  
00125

1 Q. Okay.  
2 A. And it looks very solid.  
3 Q. What picture should we hone in on, please?  
4 A. For instance, seven.

Objection (124:11 to  
124:15):  
-No foundation  
-Vague

Ruling: Overruled.

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5 Q. Okay.

6 A. I don't see, I don't see anything wrong  
7 with that at all. There is some healthy  
8 vascularization out here and we see in  
9 front of the titanium backplate the cornea  
10 is fine, as we would expect at that time so  
11 soon after surgery.

12 But the titanium backplates are  
13 better. That is the only material that I  
14 am using nowadays as a backplate.

15 Q. Okay. Let me show you a picture of Karen  
16 that was taken, of her eye taken after her  
17 tenth eye surgery at Harvard, before her  
18 eleventh eye surgery which was at Beth  
19 Israel, a non-professional picture.  
20 And those were her eyes there.  
21 Can we see on her left eye there the  
22 corneal graft? Can you see it, Doctor  
23 Dohlman?

Objection (125:15 to  
125:23):  
-No foundation  
-Assumes facts not in  
evidence  
-611(c)

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 126:2 - 126:13

2 A. I -- I cannot see the details here.

3 Q. Okay.

4 A. It looks a little red, but otherwise I  
5 cannot see.

6 Q. What is -- do you know, can you tell what  
7 the white material here is I am pointing  
8 out? What is that?

9 A. It is sort of roped and hardened mucous.

10 Q. Okay.

11 A. And mucous forming in an inflamed eye and  
12 then lack of tears and then it is sort of  
13 hardness.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 127:2 - 128:2

And then let's go to the next

3 picture which is 214. And 214 is taken  
4 June 13, 2008, which is the day before your  
5 fourth eye surgery.

6 Please tell us what we see here  
7 the day before your fourth eye surgery  
8 which was your re-suturing of her corneal  
9 graft.

10 A. Here has been a --

11 Q. Number seven.

12 A. For instance, seven, yes. On the lower  
13 portion here, it has necrotized here so the  
14 tissue is mushy and --

15 Q. So again, that is a death process we  
16 discussed? The necrotizing meaning it is a  
17 death process?

18 A. Yes.

19 Q. Okay.

20 A. Yes. And it has not healed in well. It

Objection (127:2 to  
127:9):  
-No foundation  
-Assumes facts not in  
evidence  
-602

Ruling: Sustained as to lines 127:7 through  
127:9. Otherwise overruled.

Objection (127:15 to  
127:18): 611(c), Assumes  
facts not in evidence,  
Argumentative

Ruling: Overruled.

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21 has not vascularized well and it is just  
 22 breaking down. And I believe that this is  
 23 when we decided we had to try to re-suture.  
 24 That is 6/14.

25 Q. And you performed your surgery -- you  
 00128

1 performed your surgery the day after those  
 2 pictures were taken?

Objection (127:25 to  
 128:12):  
 -611(c)  
 -Assumes facts not in  
 evidence  
 -Argumentative

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 128, Line 4

4 Q. Is that correct, sir?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 128:6 - 128:19

6 Q. I will show you your operative report here,  
 7 sir. It is on the screen.

8 A. Yes.

9 Q. Okay.

10 A. And there was actually a leak also down  
 11 below where that disintegrating tissue  
 12 existed.

13 Q. Back to this picture you showed us the day  
 14 before your fourth eye surgery, Doctor  
 15 Dohlman.

16 What percent certain are you that  
 17 this necrotizing death process, corneal  
 18 melt was as a result of Karen's  
 19 Stevens-Johnson syndrome TEN?

Objection (128:13 to  
 128:25):  
 -No foundation  
 -Argumentative  
 -Misleading

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 128:23 - 129:8

23 A. I would say, of course.

24 Q. Okay.

25 A. There is no question, 100 percent certain.  
 00129

1 Q. Thank you, sir. Okay. What are cataracts,  
 2 Doctor Dohlman?

3 A. I beg your pardon?

4 Q. What are cataracts, please, sir?

5 A. Cataracts are clouding of the natural  
 6 crystalline lens.

7 Q. Are cataracts a common complication of SJS  
 8 TEN eyes that undergo K-Pro's?

Objection (129:1 to  
 129:8):  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 129:11 - 129:21

11 A. Yes.

12 Q. Okay.

13 A. If the situation is so severe and so

## Bartlett v Mutual

14 advanced so that the K-Pro is indicated,  
 15 they usually have a cataract also. And  
 16 this was, in her case, the lens was taken  
 17 out early, at the earliest surgery.  
 18 Q. Okay. Based upon your treatment and  
 19 evaluation of Karen, were Karen's cataracts  
 20 caused by her SJS and TEN and/or her K-Pro  
 21 surgeries that she got for her SJS or TEN?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 129:24 - 130:4

24 A. Well, this is a nonspecific complication  
 25 but easily explained by the events that  
 00130

1 preceded her surgery at that time. The  
 2 cataract was taken out in October '06.

3 Q. Exhibit 136, sir, is a publication by  
 4 Doctor Zerbe, Z-E-R-B-E.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 130:11 - 130:16

11 Q. And while you are --

12 A. Et al.

13 Q. And while you are not a listed author on  
 14 this 2006 publication, it was by the Boston  
 15 K-Pro Study Group, in which you are a part.  
 16 Correct?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 130:18 - 131:6

Objection (130:3 to 131:1):

-402

-611(c)

-No foundation

-Improper publishing

Ruling: Sustained.

18 A. Yes. I am part of it in the sense that we  
 19 send in our cases for evaluation. We do  
 20 that on a constant basis. But at that time  
 21 it was in my interest to distance myself  
 22 from this particular publication. I wanted  
 23 it, our device to be evaluated  
 24 independently from the outside, and this  
 25 was one of several such publications of  
 00131

1 that kind.

2 Q. Yes, sir. And on the second to last page  
 3 they list the study, the Boston K-Pro Study  
 4 Group, and they don't list them  
 5 alphabetically, and they list you first.  
 6 Do you see that, sir?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 131:8 - 131:12

Objection (131:2 to  
 131:12):

-402

-611(c)

-No foundation

-Improper publishing

Ruling: Sustained.

8 A. Well, that was nice of them. But we had  
 9 the largest, largest material so that it

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10 probably was because of that.  
 11 Q. Yes, sir. And I would like to refer your  
 12 attention to 17, 1782, Table 7.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 131, Line 16

Objection: 402, 611(c),  
 No foundation, Improper  
 publishing

Ruling: Sustained.

16 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 131:25 - 132:2

Generally, this study is  
 00132

1 about Boston K-Pro and how patients are  
 2 doing with it. Fair?

Objection (131:25 to  
 132:10):  
 -402  
 -611(c)  
 -No foundation  
 -Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 132:4 - 132:8

4 A. Yes.  
 5 Q. Okay.  
 6 A. Yes.  
 7 Q. Table 7 lists occurrences of nonsurgical  
 8 post-op complications. Correct?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 132:10 - 132:15

10 A. Correct.  
 11 Q. What I would like you to do, please, sir,  
 12 is just go through that list. And if Karen  
 13 had such a nonsurgical post-op  
 14 complications, could you, please, identify  
 15 it for us.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 132:18 - 132:20

Objection:  
 -No foundation

Ruling: Overruled.

18 Q. Please take a look at Table 7. And if  
 19 Karen had one of these nonsurgical post-op  
 20 complications, please identify it for us.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 132:25 - 133:20

Objection:  
 -701  
 -702  
 -Argumentative  
 -Compound  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Overruled.

25 A. It would be listed under Other.  
 00133  
 1 Q. Okay. And then --  
 2 A. And particularly --

Bartlett v Mutual

3 Q. You identify it, and I will highlight it,  
 4 please.  
 5 A. Wound leak.  
 6 Q. Yes, sir.  
 7 A. Peripheral corneal thinning.  
 8 Q. Yes, sir.  
 9 A. Corneal melting.  
 10 Q. Yes, sir.  
 11 A. Wound dehiscence.  
 12 COURT REPORTER: Wound what?  
 13 THE WITNESS: Dehiscence,  
 14 D-E-H-I-S-C-E-N-C-E. That's it.  
 15 Q. Okay. What percent certain are you that  
 16 Karen Bartlett's wound leak, peripheral  
 17 corneal thinning, corneal melting and wound  
 18 dehiscence are as a result of and caused by  
 19 her SJS and TEN or the surgeries she had to  
 20 attempt to restore her vision?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 133:22 - 134:2

22 Foundation. Compound. Calls for expert  
 23 testimony. Assumes facts. Misleading.  
 24 A. There is no question about the correlation  
 25 in my mind.

00134

1 Q. Are you 100 percent certain?  
 2 A. 100 percent certain.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 134:4 - 134:7

4 Q. Now, what I would like to refer your  
 5 attention to, sir, is a paper that you were  
 6 a co-author of in 2001, whose lead author  
 7 was Doctor Yaghouti.

Objection: 402, 611  
 (c), Argumentative,  
 No foundation, 701,  
 702, Improper opinion  
 testimony from non-  
 retained expert,  
 Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 134:19 - 135:3

19 Q. Is that a 2001 publication that you  
 20 co-authored, sir?  
 21 A. That is correct.  
 22 Q. Okay. And this told us or reported how  
 23 long, on the fourth page it has a chart of  
 24 percentage of eyes retaining a vision of  
 25 between 20/20 and 2200 for a given period  
 00135  
 1 of years based on what their preoperative  
 2 condition was.  
 3 Is that correct, sir?

Objection (134:19 to  
 135:15):  
 -402  
 -611(c)  
 -701  
 -702  
 -Argumentative  
 -No foundation  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 135:6 - 135:15

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6 A. Table 2?

7 Q. Yes, sir.

8 A. Yes.

9 Q. Okay. And for example, it lists Graft

10 Failure and the Pemphigoid that you

11 discussed, and it also lists Chemical Burns

12 and it also lists as a fourth category

13 Stevens-Johnson syndrome.

14 Correct, sir?

15 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 135:17 - 135:22

17 Q. And do you agree this reported, this study  
18 that you co-authored, that Stevens-Johnson  
19 syndrome had the worst presentation; and  
20 that is at four, that at four and a half  
21 years, zero percent had vision that was  
22 better than legal blindness. Correct?

Objection (135:17 to  
136:1):

-402

-611(c)

-701

-702

-Argumentative

-No foundation

-Improper opinion

testimony from non-

retained expert

-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 136:1 - 136:4

1 A. That is correct.

2 Q. Okay. All -- even chemical burns had a

3 better course after operations than

4 Stevens-Johnson syndrome. Correct?

Objection (136:2 to  
136:6):

-402

-611(c)

-701

-702

-Argumentative

-No foundation

-Improper opinion

testimony from non-

retained expert

-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 136:6 - 136:20

6 A. Correct.

7 Q. Are you familiar, sir, with the Bersudsky

8 2001 publication entitled --

9 A. Yes.

10 Q. -- "The Profile of Repeated Corneal

11 Transplantation"?

12 A. Yes.

13 Q. Okay. That is Exhibit No. 132. And it

14 reported on page three what the expectancy

15 was for patients who were followed of how

16 long their grafts would last after a first

17 re-graft, which would mean a second

18 operation, or a subsequent re-graft which

19 would mean a third operation.

20 Correct, sir?

Objection (136:7 to  
136:25):

-402

-611(c)

-701

-702

-Argumentative

-No foundation

-Improper opinion

testimony from non-

retained expert

-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 136:23 - 137:7

23 A. Right.

24 Q. And your answer, sir?

25 A. Correct.

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00137

- 1 Q. And these grafts that they are referring  
2 to, those are K-Pro's, correct?  
3 A. No.  
4 Q. Okay. What grafts --  
5 A. No, no.  
6 Q. What grafts are they?  
7 A. Standard corneal transplant.

Objection (137:1 to  
137:7):  
-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 137:10 - 137:13

- 10 This graph reports from the study  
11 that for standard corneal transplants, non  
12 K-Pro surgeries, what the expected course  
13 of those such surgeries are. Correct?

Objection:  
-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion testimony  
from non-retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 137:16 - 138:1

- 16 A. Correct. That is an outcome study for  
17 standard corneal transplantation in Israel.  
18 And it is not the first graft, but it is  
19 the second graft, which is a thin line, and  
20 the thick line is subsequent grafts.  
21 Q. So for standard corneal transplants, non  
22 K-Pro, this reports that when you get your  
23 third operation, meaning your second  
24 re-graft, at five years there is a zero  
25 expectancy that you would still be able to  
00138  
1 retain such a graft. Correct?

Objection (137:21 to  
138:4):  
-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 138, Line 4

- 4 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 138:7 - 138:8

- 7 Q. Well, first of all, is that correct, my  
8 question?

Objection (138:7 to  
138:20):  
-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 138:10 - 138:20

- 10 A. That is correct. But this has -- this is  
11 correct, but it has very little if anything  
12 to do with Stevens-Johnson because what  
13 they did, they had a -- they had all the  
14 cases that they found, and the number with

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15 severe Stevens-Johnson or autoimmune  
16 diseases were just a couple of cases out of  
17 70 something, so and they were not  
18 separated out. And you would think that  
19 they would probably be the first to go, but  
20 that doesn't -- it is not shown here.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 139:21 - 139:24

21 You are listed here as amongst the  
22 22 surgeons that contributed to this poster  
23 presentation.  
24 Correct, sir?

Objection:

-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 140:1 - 140:20

1 A. Oh, I see down there. Okay. Oh,  
2 absolutely.  
3 Q. Okay. And then --  
4 A. Yes, yes.  
5 Q. Thank you, sir. Do you know whether or not  
6 the results from this poster presentation  
7 have been published yet, sir?  
8 A. One early publication has been published  
9 in, I believe, in Ophthalmology. And then  
10 there have been follow-ups.  
11 And it is interesting that the  
12 Stevens-Johnson, the autoimmune category is  
13 dropping way down. The others are having a  
14 very nice retention.  
15 Q. Okay. And --  
16 A. Let me see here.  
17 Q. And the purpose of this poster  
18 presentation, it says right here under  
19 Purpose --  
20 A. Yes. You can see that already here.

Objection (140:1 to  
141:2):

-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 140:21 - 141:2

21 Q. Hold on, Doctor. Let me get the questions  
22 out and then you can give answers.  
23 A. All right.  
24 Q. Was the purpose of this presentation to  
25 report the causes of failure to retain the  
00141  
1 Boston K-Pro?  
2 A. Correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 141:5 - 141:8

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5 Q. Okay. And did this report that patients  
6 with autoimmune disease had the poorest  
7 K-Pro retention mostly due to corneal  
8 melting around the implant --

Witness\_ Claes Dohlman, M.D., Ph.D. -: 141:11 - 141:12

Objection (141:5 to  
141:12):  
-402  
-611(c)  
-701  
-702  
-Argumentative  
-No foundation  
-Improper opinion  
testimony from non-  
retained expert  
-Improper publishing

Ruling: Sustained.

11 Q. Was that the conclusion, Doctor.  
12 A. That is correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 141:15 - 142:3

15 A. That is correct.  
16 Q. Okay. Is that what happened to Karen  
17 Bartlett?  
18 A. Yes.  
19 Q. And Karen Bartlett had --  
20 A. She was in that category.  
21 Q. Yes, thank you.  
22 A. That lower group that separates itself from  
23 the other groups.  
24 COURT REPORTER: The lower group  
25 that what?  
00142  
1 THE WITNESS: That separates,  
2 separates itself from the other groups so  
3 markedly.

Objection (141:16 to  
142:3):  
-611(c)

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 142:16 - 143:1

16 Q. Okay. And then this poster presentation  
17 references these two figures. And it says  
18 Figures 1 and 2 demonstrate repeat corneal  
19 transplant survival.  
20 And that is the Boston K-Pro  
21 survival, correct, sir?  
22 A. Correct. And that is, the first is a  
23 quotation from the Israeli study.  
24 Q. The one we just --  
25 A. The one we just talked about.  
00143  
1 Q. Yes, sir. And that is Bersudsky. Okay.

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 143:15 - 145:5

15 Q. And then Figure 2, sir, is what, please?  
16 A. I beg your pardon?  
17 Q. What is Figure 2?  
18 A. Yes.  
19 Q. What is it, please?

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing

Ruling: Sustained.

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20 A. Survival of the Boston K-Pro Stratified by  
 21 Preoperative Diagnosis.  
 22 Q. Okay. And what -- tell us what that means,  
 23 please, sir.  
 24 A. This is the so-called Kaplan-Meyer Survivor  
 25 Curve, meaning that the so-called other,  
 00144  
 1 plus the chemical burns, they are retained  
 2 very well. Those are the two lines up  
 3 there.  
 4 Q. Okay.  
 5 A. And the third group is the small but  
 6 important autoimmune category, and this is  
 7 the lower group that falls down here, way  
 8 down.  
 9 Q. Okay.  
 10 A. And subsequent data are reinforcing this  
 11 very markedly --  
 12 Q. Okay.  
 13 A. -- so that the autoimmune diseases are  
 14 going way down.  
 15 Q. First let me ask, so this, this blow up  
 16 here of Figure 2 is the same Figure 2 that  
 17 is on the first page in smaller form.  
 18 Correct?  
 19 A. Yes.  
 20 Q. Okay. And let's take a look at this bigger  
 21 one. Okay.  
 22 So survival probability is on this  
 23 axis, and this would be 100 percent, and  
 24 this would be 20 percent. Correct?  
 25 A. Correct.  
 00145  
 1 Q. Okay. And then what is on this axis is  
 2 months, right, so --  
 3 A. Correct.  
 4 Q. -- 48 months is five years or 48 months is  
 5 four years, right?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 145:7 - 145:12

7 A. Yes.  
 8 Q. Okay. So is what this study reported from  
 9 the 23 surgeons, one of which was you, that  
 10 if you have an autoimmune disease like SJS,  
 11 that at more than four years the retention  
 12 was about 25 percent?

Objection (145:8 to  
 145:12):  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 145:18 - 145:22

18 A. Correct.  
 19 Q. Okay. And is what that means is you have a  
 20 75 percent chance after four years of not  
 21 being able to keep in the original K-Pro  
 22 from your first surgery?

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -Improper publishing

Ruling: Sustained.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 145, Line 25

Objection: 402, 611(c),  
701, 702  
Improper opinion  
testimony from non-  
retained expert  
Argumentative  
Improper publishing

Ruling: Sustained.

25 A. Correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 146:10 - 146:18

10 Q. Okay. Is there any study that would tell  
11 us or that reports, just case series, case  
12 report, that tells us what percent of SJS  
13 TEN patients with ocular surface diseases  
14 from SJS and TEN keep K-Pro's how long --  
15 strike that.

16 Is there any study or report or  
17 case series that tells us how many K-Pro  
18 surgeries SJS and TEN patients get?

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative

Ruling: Sustained (through line 147:5).

Witness\_ Claes Dohlman, M.D., Ph.D. -: 146:20 - 147:5

20 Foundation. Calls for expert testimony.

21 A. Well, the Kaplan-Meyer --

22 COURT REPORTER: Kaplan-Meyer?

23 A. Kaplan, K-A-P-L-A-N, hyphen, M-E-Y-E-R,  
24 presentation technique shows just that  
25 because it shows at which time was there a

00147

1 loss.

2 So here, for instance, here was  
3 one, here was one, here was one, here was  
4 one, here was one, and here was one and  
5 here was one. They are not --

Witness\_ Claes Dohlman, M.D., Ph.D. -: 147:9 - 148:6

9 Q. Well, your answer? Go ahead, Doctor.

10 A. These are not, were not that many cases at  
11 this time. There are many many more up  
12 here.

13 But the problem, we can go to the  
14 Sayegh and Ang study. There we can see  
15 with a little better with 16 cases --

16 Q. Okay.

17 A. -- of Stevens-Johnson.

18 Q. I am going to go there next. But before we  
19 do, look at the screen, please, Doctor.

20 Okay.

21 Tell us every time it drops here,  
22 what does that mean, sir?

23 A. That means that one case is dropping out,  
24 meaning, meaning it has to be replaced.

25 Q. I see. So does that mean that if we count,

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing

Ruling: Sustained.

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00148

- 1 there is one, two, three, four, five, six,  
 2 seven dropouts?  
 3 A. And seven, yes.  
 4 Q. And does a dropout mean someone who needed  
 5 a K-Pro replacement?  
 6 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 149:12 - 149:17

Objection:  
 -402  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

- 12 Q. Yes. What do you think best resulted in or  
 13 why was there better results in this 2008  
 14 series of 15 patients than, for example,  
 15 the 2001 series from Yaghouti which had --  
 16 A. Seven.  
 17 Q. --many -- seven SJS patients?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 149:19 - 150:18

- 19 A. The reason was, number one, that we have  
 20 eliminated infections. And that has been a  
 21 dramatic improvement for the whole, for the  
 22 whole field. Previously, virtually all  
 23 severe cases succumbed to endophthalmitis,  
 24 meaning infection of the inside of the eye  
 25 or loss of the eye. But now with our  
 00150

- 1 prophylactic antibiotics schedules,  
 2 particularly the introduction of  
 3 Vancomycin, has been enormously effective.  
 4 And so we haven't, for ten years we haven't  
 5 had a single acute bacterial  
 6 endophthalmitis while treated with  
 7 Vancomycin. They have been dramatic. So  
 8 that has been one, one, one reason.

- 9 The other reason is we are more  
 10 aware of the danger of glaucoma in these  
 11 cases. Karen Bartlett did not have  
 12 glaucoma but, but, but other people had.  
 13 And so that together brought five-year  
 14 results in our hands from zero to 50  
 15 percent.

- 16 Q. And here is your results on page 441,  
 17 correct, sir, and there is the graph that  
 18 shows them?

Objection (150:16 to  
 150:18):  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -Improper publishing

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 150:20 - 151:1

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -Improper publishing

Ruling: Sustained.

- 20 A. Yes.  
 21 Q. Okay.  
 22 A. That is correct.  
 23 Q. And you actually compared these results to  
 24 the Yaghouti 2001 publication, which is

## Bartlett v Mutual

25 here that we have been discussing, correct?

00151

1 A. Yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 151:3 - 151:5

Objection:

-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing

Ruling: Sustained.

3 Q. And here in the blue and red lines were the  
4 results from this study, correct?

5 A. Correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 151:7 - 151:15

Objection:

-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing

Ruling: Sustained.

7 Q. And in comparing this group of 15 patients  
8 to the Yaghouti group of seven patients and  
9 the surgeries involved, you were comparing  
10 your own surgeries to your own prior  
11 surgeries because you had --

12 A. Correct.

13 Q. -- all the surgeries in the Yaghouti series  
14 and you did all the surgeries in this  
15 series?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 151:17 - 151:21

Objection:

-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-Improper publishing  
-Speculation

Ruling: Sustained.

17 A. That is correct.

18 Q. Let me ask you, sir, do you think that from  
19 the 2001 series of patients to this 2008  
20 series of patients that your surgical  
21 techniques improved?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 152:25 - 152:4

25 A. Not really the surgical technique. But  
00152

1 postoperative treatment, I would say.

2 Q. Okay. Has endophthalmitis resulting in  
3 loss of the eye due to infection been  
4 virtually eradicated by Vancomycin?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 152:7 - 153:10

Objection (152:7 to  
152:24):

-402  
-No foundation

Ruling: Sustained.

7 A. That is correct. And that has at long last  
8 been published just this month in a large  
9 number of cases.

10 COURT REPORTER: What?

11 A. The effect of Vancomycin in preventing  
12 infection after keratoprosthesis has been

## Bartlett v Mutual

13 published this month. Durand, our  
 14 infectious disease specialist, is the first  
 15 author and me, all my cases. And the net  
 16 effect that we had not a single, for ten  
 17 years, while on Vancomycin, not a single  
 18 acute bacterial endophthalmitis or loss of  
 19 the eye. We cultured what is technically  
 20 called slow growing microbacterium from one  
 21 disintegrating eye but it can be also  
 22 virtually neglected. But so it has  
 23 enormous, enormous effect, preventive  
 24 effect.

25 Q. I spoke with you earlier, Doctor Dohlman,  
 00153

1 about timeline up to first surgeries. Now  
 2 I would like to speak with you, sir, if I  
 3 might, about timelines after surgeries.  
 4 My question, sir, is does the  
 5 ocular surface disease caused by SJS when  
 6 it is significant enough to result in legal  
 7 blindness or worse, how ever you want to  
 8 teach us that that disease is defined, does  
 9 it ever get cured or go away, the physical  
 10 results of SJS or TEN?

Objection (152:25 to  
 152:10):  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 153:14 - 154:2

14 A. No, it doesn't really go, go completely  
 15 away. But I have observed that many times  
 16 people who had had Stevens-Johnson episode,  
 17 ten, 20, 30 years earlier, they have a more  
 18 benign course than somebody like Karen  
 19 Bartlett, who had the episode the year  
 20 before.

21 Q. Okay.

22 A. They are more acutely inflamed.

23 Q. Can the ocular surface disease caused by  
 24 SJS and TEN when it is significant to  
 25 result in legal blindness last 10 or 20  
 00154

1 years despite the best treatments known to  
 2 modern medicine?

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 154:6 - 154:10

6 A. Absolutely.  
 7 Q. Can the ocular surface disease and  
 8 blindness when it's caused by SJS when it's  
 9 significant enough to cause legal  
 10 blindness, or worse, be permanent?

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 154:12 - 154:15

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12 A. Again, absolutely.  
13 Q. Okay. You've been working on K-Pro's since  
14 your first series of patients was published  
15 in 1974. Correct, sir?

Objection (154:13 to  
154:15): 402, 611(c),  
701, 702, Improper  
opinion testimony  
from non-retained  
expert,  
Argumentative, No  
foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 154:18 - 154:21

18 A. Correct.  
19 Q. Okay. You've been publishing on K-Pro's  
20 and their potential use for SJS since what  
21 year, sir, approximately?

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 154:24 - 155:17

24 A. I think really Yaghouti was the first  
25 meaningful publication and --  
00155  
1 Q. It's the one we have been discussing?  
2 A. We just discussed that, yes.  
3 Q. Yes, sir.  
4 A. And Ang, sir, was the second.  
5 COURT REPORTER: And who?  
6 THE WITNESS: Ang, A-N-G, Ang is  
7 from Singapore.  
8 Q. And when was that published, sir?  
9 A. A year ago.  
10 Q. Okay. And the title of it?  
11 A. You had it there. It was Sayegh, Ang  
12 actually.  
13 Q. Yes. Sayegh, Ang, got it, which I have  
14 been referring to as your 2008 publication?  
15 A. Yes.  
16 Q. You are the senior listed author, correct?  
17 A. Yes. All my cases.

Objection:  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 155:19 - 155:24

19 Q. So is it correct to state, sir, that the  
20 two biggest analyses of K-Pro treatment and  
21 SJS were 2001, that you were a co-author  
22 of; and in 2008, that you were a co-author  
23 of; and both times you did 100 percent of  
24 the operations?

Objection (155:19 to  
156:10):  
-402  
-611(c)  
-701  
-702  
-Improper opinion  
testimony from non-  
retained expert  
-Argumentative  
-No foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 156:2 - 156:10

2 A. That is correct. But there is one larger  
3 study and that is, that comes from  
4 Barcelona, and it is Temprano is the senior  
5 surgeon there. I don't have the -- this

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6 came out about a year ago.  
 7 And it shows rather similar  
 8 results in Stevens-Johnson, but in more  
 9 cases than what we had, to what we had with  
 10 Sayegh and Ang.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 156:22 - 157:1

Objection:

-402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

22 Q. In cases where the person does not have SJS  
 23 or an autoimmune disease, which is SJS as  
 24 you have taught us, have the results of  
 25 your Boston K-Pro provided vision to many  
 00157  
 1 people who would otherwise be blind?

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 157, Line 5

5 A. That is correct. In the --

Witness\_ Claes Dohlman, M.D., Ph.D. -: 157:7 - 157:10

Objection:

-402  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

7 How effective and good is the  
 8 Boston K-Pro in cases unlike Karen's, where  
 9 people don't have SJS or an autoimmune  
 10 disease, please?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 157:12 - 158:9

12 A. Our, our internal results unpublished is  
 13 that the non-autoimmune disease, in  
 14 non-severe chemical burn cases, sort of the  
 15 standard bulk of corneal failures for  
 16 scarring and so on, which on a worldwide  
 17 basis, I am sure, would be at least 98  
 18 percent of all corneal blindness. There  
 19 they can, can do wonderfully well. There  
 20 the problem is more than in advanced  
 21 disease that could happen, glaucoma  
 22 occurring and/or even retina problems and  
 23 so on. But not the cornea, the cornea we  
 24 can replace now.

Objection (157:12 to  
 158:2):

-402  
 -611(c)  
 -701  
 -702  
 -Improper opinion  
 testimony from non-  
 retained expert  
 -Argumentative  
 -No foundation

Ruling: Sustained.

25 Q. Okay.

00158

1 A. It is an entirely different shift in, a  
 2 paradigm shift in the treatment.  
 3 Q. To your knowledge, Doctor Dohlman, based  
 4 upon your care and treatment of Karen  
 5 Bartlett, did she have any preexisting eye  
 6 conditions or other eye conditions which  
 7 predisposed her to having these corneal

Objection (158:3 to 158:9):

-No foundation  
 -Argumentative  
 -611(c)

Ruling: Overruled.

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8 melts and adhesions and leaks which  
9 resulted in all these operations?

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 158, Line 11

Objection:  
-No foundation  
-Argumentative  
-611(c)

Ruling: Overruled.

11 Q. And her blindness?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 158:14 - 158:17

14 A. Not to my knowledge. She had LASIX, but  
15 that doesn't lead to any Stevens-Johnson  
16 symptoms and it would have been totally  
17 irrelevant in this situation.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 160:1 - 160:7

1 Did you and your colleagues at  
2 Harvard start using Remicade to attempt to  
3 save Karen's vision?  
4 A. Yes.  
5 Q. What's Remicade? What is Remicade?  
6 A. It is technically an antagonist blocker of  
7 tumor necrosis alpha.

Objection (160:1 to 160:3):  
-No foundation  
-Argumentative  
-611(c)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 160:13 - 160:20

13 THE WITNESS: Factor. Tumor  
14 necrosis factor alpha. And which is an  
15 ugly component causing inflammation. And I  
16 have a couple of spectacular results in  
17 Stevens-Johnson, other patients than Karen.  
18 Q. Approximately how much does Remicade cost  
19 per year?  
20 A. About 25,000.

Objection (160:18 to 160:20):  
-402 (Plaintiff is not on  
Remicade)

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 161:1 - 161:15

1 Q. Did Karen continue Remicade through now, or  
2 did you and your colleagues take her off  
3 it?  
4 A. We took her off.  
5 Q. Why?  
6 A. Because I thought that we, we did -- she  
7 had some lung symptoms of, asthma-like lung  
8 symptoms from before, undoubtedly, in my  
9 interpretation, related to Stevens-Johnson  
10 because lung problems can occur in

## Bartlett v Mutual

11 Stevens-Johnson. I had a young lady die  
 12 from it, from lung complications with  
 13 Stevens-Johnson, one of my patients. But  
 14 and then I did not want to push the  
 15 Remicade under those circumstances.

Objection (161:11 to  
 161:13):  
 -402  
 -Move to strike as non-  
 responsive answer

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 161:18 - 161:22

18 Q. Understanding that you don't publish in the  
 19 area of all the things that SJS can cause,  
 20 is it true that you also told the video  
 21 technician here today, he's commented that  
 22 SJS and TEN can cause basically everything?

Objection:  
 -402  
 -611(c)  
 -701  
 -702  
 -801  
 -802  
 -Improper opinion  
 testimony from non-  
 retained expert

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 161, Line 25

25 A. Yes, almost everything.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 164:7 - 164:19

7 Q. Are all of your opinions, observations, and  
 8 prognoses, in other words, everything that  
 9 you saw and did with respect to Ms.  
 10 Bartlett is contained within this binder.  
 11 Correct?

12 A. Yes. And, and reasons are not doing this  
 13 or that are not well spelled out. We don't  
 14 have the time in the heat of the clinic to  
 15 go into details. We cannot refer to  
 16 literature and we cannot -- we just say  
 17 that this is what we are going to do and  
 18 it's not a question of explaining exactly  
 19 why.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 165:15 - 166:2

15 Q. Okay. Fair to say that you did not  
 16 specifically rely upon any of those studies  
 17 during the course and treatment, your  
 18 course and treatment of Ms. Bartlett?

19 A. Well, those studies are forming part of my  
 20 knowledge base and overall Gestalt  
 21 information of the SJS. And that -- this  
 22 is how we work and physicians work in  
 23 general by long-term experience and, and  
 24 sort of intuition of where to go. But we  
 25 don't have the time in the clinic to  
 00166

1 justify a legal opinion why we do every  
 2 step this way or that way.

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Witness\_ Claes Dohlman, M.D., Ph.D. -: 172:23 - 175:3

23 And my question to you is is Ms.

24 Bartlett's case a hopeless case?

25 A. No. It is a question of nomenclature. I  
00173

1 think when Doctor Chodosh talks about  
2 hopeless cases, hopeless cases, hopeless by  
3 standard treatment, standard eye treatment.

4 And that is common jargon.

5 But here we can take many cases a  
6 bit further; and those who have been  
7 previously deemed hopeless, particularly  
8 with regard to standard corneal  
9 transplantaion, we can now tackle with  
10 success.

11 Q. Would you agree that Ms. Bartlett was, in  
12 fact, very fortunate to have the service of  
13 you and your clinic?

14 A. Well, we, we'll see about that ten years  
15 from now how much, how much help we have  
16 been to her.

17 Q. Mm-hmm. And what is your, based on what  
18 you know of her, the course and scope of  
19 her treatment up to your fourth eye surgery  
20 on her and your intermittent check ins with  
21 Doctor Chodosh, what would you say is her  
22 prognosis now with respect to her vision?

23 A. I would say that it's highly uncertain.  
24 She has reacted with more inflammation,  
25 more necrosis, more melts than was  
00174

1 expected, and more than most other  
2 Stevens-Johnson cases we have had. So she  
3 has been really permanent in terms of her  
4 inflammation.

5 Q. Would you say that, with respect to  
6 Stevens-Johnson patients, her course has  
7 been unique or an outlier?

8 A. Well, not entirely but, but certainly on  
9 the, on the very complicated side, yes.

10 Q. All right. Can you identify on a going  
11 forward basis if there will be some tipping  
12 point or threshold at which it will be able  
13 to be determined if her vision will improve  
14 or get worse?

15 A. If everything stabilizes and there will be  
16 no more melts or very little inflammation  
17 in the corneal carrier, then there is hope.  
18 But with these repeated melts and leaks,  
19 the risk of retinal detachment is very  
20 high.

21 Q. Mm-hmm.

22 A. And I have only recently been digging into  
23 that topic and I will give a presentation  
24 in Slovenia in two weeks on that topic.

25 And we have in Stevens-Johnson a very high  
00175

Objection (174:21 to 175:3):  
-Move to strike as non-  
responsive

Ruling: Sustained.

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1 rate of retinal detachment. And half of  
2 them can be repaired, but they, they don't  
3 see well.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 175:19 - 175:21

Objection (175:19 to 176:11):  
402, 611(c), 602, 701, 702, No  
foundation, Speculation,  
Improper opinion testimony  
from non-retained expert

Ruling: Sustained.

19 Q. What is the risk of retinal detachment in  
20 SJS cases, Doctor?

21 A. The risk of retinal detachment --

Witness\_ Claes Dohlman, M.D., Ph.D. -: 175:25 - 176:11

25 A. A retinal detachment after keratoprosthesis  
00176

1 is very high.

2 Q. How high?

3 A. In Stevens-Johnson, we have, I think, of  
4 all the Stevens-Johnson that we have done,  
5 I don't remember how many there were, but I  
6 think that 40 percent ended up with a real  
7 retinal detachment, which is extremely  
8 high.

9 Q. For the approximately 60 percent who don't  
10 have retinal detachment, can those 60  
11 percent be repaired to restored vision?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 176:15 - 176:21

Objection:  
-402  
-602  
-611(c)  
-701  
-702  
-No foundation  
-Speculation  
-Improper opinion  
testimony from non-  
retained expert

Ruling: Sustained.

15 A. The 60 percent have no retinal detachment.

16 Q. Okay.

17 A. So far.

18 Q. Okay.

19 A. But 40 percent have.

20 Q. And what does that lead to in that you have  
21 retinal detachment?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 176:24 - 177:14

24 A. When you have the retinal detachment, an  
25 attempt is to repair. And one cannot  
00177

1 anatomically repair and put back the retina  
2 and reattach it in nearly half the cases of  
3 detachment. But and very few see well,  
4 very very few.

5 Q. Defining opinions arising or relating to  
6 your care and treatment of Karen Bartlett  
7 as including any literature that relates to  
8 preoperative diagnoses, postoperative  
9 retention rates of K-Pro's meaning how long

Objection (177:5 to  
177:14): 403, 602, 611  
(c), 701, 702,  
Argumentative

Ruling: Sustained.

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10 people can keep them, and complications  
 11 including corneal melts, did you have all  
 12 the literature we discussed today in mind  
 13 in the course of your care and treatment of  
 14 Karen Bartlett?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 177:20 - 178:4

20 A. Yes. If I have the literature in my mind,  
 21 is that what your question?  
 22 Q. Yes.  
 23 A. I think so.  
 24 Q. Yes. Is it correct to state that you have  
 25 many opinions about prognosis for patients,  
 00178  
 1 including Karen Bartlett, through the last  
 2 time you were actively treating her, that  
 3 you do not write down in your medical  
 4 record?

Objection (177:20 to  
 177:23): Misleading,  
 Confusing, No  
 foundation, Speculation

Ruling: Sustained.

Objection (177:24 to  
 178:4):  
 -602  
 -611(c)  
 -No foundation

Ruling: Overruled.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 178:9 - 178:15

9 A. Of course.  
 10 Q. Let me ask, why is it true, Doctor, that  
 11 you don't write down every single opinion  
 12 you have, specific opinion regarding Karen  
 13 Bartlett in Karen Bartlett's medical chart?  
 14 A. In the heat of the battle in the clinic  
 15 there is simply no time.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 179:2 - 179:25

The first document I am going to  
 3 show you, sir, is I will represent to you  
 4 is written by Dr. John T. Schulz. If you'd  
 5 look at the screen, it's probably easier,  
 6 sir.  
 7 And Dr. John T. Schulz, I will  
 8 represent to you, was an attending burn  
 9 surgeon for Karen at Mass. General. And on  
 10 August, excuse me, October 6, 2005, here is  
 11 what he said. I will blow it up.  
 12 He said, "Karen's bracelet needs  
 13 to add NSAID Sulindac." And then he said,  
 14 "The risk of TEN to other meds,  
 15 parenthetically, probably more than one per  
 16 million discussed," he says, "Emphasized  
 17 that she must avoid all NSAID's and that  
 18 this should be on her Med Alert bracelet."  
 19 And he said, "Other meds probably okay  
 20 unless they have chemical structure  
 21 resembling Sulindac. Any class of meds she  
 22 tolerated during her admission should be

Objection:  
 -402  
 -602  
 -611(c)  
 -No foundation

Ruling: Sustained.

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23 okay."  
24 Did I read that correctly, first  
25 of all, Doctor?

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 180, Line 2

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

2 A. I think so, yes.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 180:7 - 180:19

7 A. Yes.  
8 Q. Thank you. Okay. The second document is  
9 Exhibit 38. And it is seven pages from  
10 here at Mass. Eye Ear clinic. And the  
11 first one is by Doctor Papaliodis where he  
12 lists NSAID's Sulindac. The second one,  
13 the Mass. Eye Ear, and it is on 10/31/06,  
14 and it says NSAID, it looks like it has got  
15 an arrow, it says Sulindac caused  
16 Stevens-Johnson syndrome, and it says  
17 Sulfa.  
18 Do you see that, Doctor?  
19 A. Yes.

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 180:24 - 181:6

24 Q. Okay. The third page at Mass. Eye Ear  
25 again lists NSAID Sulindac, Stevens-Johnson  
00181  
1 syndrome. And that is signed by Doctor  
2 Gupta, who you have --  
3 A. One of our fellows, yes.  
4 Q. And he has done surgeries with you on Karen  
5 Bartlett. Correct?  
6 A. Yes.

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 181, Line 10

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

10 A. Correct.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 181:16 - 181:24

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

16 Q. Okay. This document at Mass. Eye Ear says  
17 Sulfa, NSAID Sulindac.  
18 The next page says NSAID Sulindac,  
19 Stevens-Johnson syndrome.  
20 The next page says NSAID Sulindac,

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21 and that has got an arrow, and it says  
22 caused Stevens-Johnson syndrome. And it  
23 has got your name on it, it is dated  
24 10/31/06.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 182:6 - 182:8

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained.

The next page says NSAID

7 Sulindac, Stevens-Johnson syndrome,  
8 10/31/06, also signed by Doctor Gupta.

Witness\_ Claes Dohlman, M.D., Ph.D. -: 182:11 - 182:14

Objection:  
402, 602, 611(c), No  
foundation

Ruling: Sustained (through line 182:22).

11 Q. The next page says NSAID Sulindac Sulfa, it  
12 says allergies/reactions, NSAID's Sulindac.  
13 Do you recognize that signature,  
14 sir?

Witness\_ Claes Dohlman, M.D., Ph.D. -: 182:17 - 183:3

Objection:  
402, 602, 611(c), No  
foundation, Misleading,  
Confusing, Argumentative

Ruling: Overruled.

17 A. Dager.  
18 Q. Okay.  
19 A. Mona Dager, a cornea fellow.  
20 Q. Thank you, sir. And the last page on  
21 9/28/07, also at Mass. Eye Ear, says  
22 allergies, Sulindac, NSAID.  
23 My question, sir, is to your  
24 knowledge did anyone at Mass. Eye Ear,  
25 including yourself, ever reach a conclusion  
00183  
1 contrary, let's be clear, to this  
2 statement, NSAID's Sulindac caused  
3 Stevens-Johnson syndrome?

Witness\_ Claes Dohlman, M.D., Ph.D. -: Page 183, Line 6

6 A. No,

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Witness\_ Nam Heui Kim - Vol. 1.txt: 1:1 - 1:24

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

-----x  
KAREN L. BARTLETT and  
GREGORY S. BARTLETT,  
Plaintiffs

Civil Action  
vs. No. 08-CV-358-JL

MUTUAL PHARMACEUTICAL COMPANY,  
INC., and UNITED RESEARCH  
LABORATORIES, INC.,  
Defendants  
-----x

VIDEOTAPED DEPOSITION OF NAM HEUI KIM, a witness  
called by and on behalf of the Plaintiffs, taken  
pursuant to Federal Rules of Civil Procedure, before  
Nicole E. Guilbert, a Notary Public in and for the  
Commonwealth of Massachusetts, at UMass Medical  
Center, 55 Lake Avenue North, on Wednesday, September  
30, 2009, commencing at 9:14 a.m.

---

Witness\_ Nam Heui Kim - Vol. 1.txt: 4:24 - 7:8

Q. Please state your name for the record.

A. Nam Heui Kim.

00005

Q. And what do you do for a living?

A. I am a trauma and general surgeon and  
intensivist at UMass Medical Center.

Q. And are we at UMass Medical Center today?

A. Yes, we are.

Q. And do you hold any board certifications,  
Doctor?

A. I hold board certification in general surgery  
and surgical critical care.

Q. And are you licensed to practice in any states?

A. I'm licensed to practice in Massachusetts.

Q. And did you previously do either a residency or  
an internship or a fellowship, Doctor?

A. Yes. I've done an internship, a residency, and  
a number of fellowships.

Q. Okay. If you take us through chronologically,  
please, first, where'd you go to medical school,  
please, Doctor?

A. I went to medical school at Einstein in New York  
City.

Q. And what year did you graduate from Albert  
Einstein Medical School?

A. Let's see, that was 1993.

Q. And what did you do after you -- and did you  
become a doctor in 1993 licensed to practice in New

00006

York?

A. No. I became a doctor without a license and  
started a residency in Boston.

Q. Okay. And what year did you start that

Bartlett v Mutual

5 residency in Boston, please?

6 A. 1993.

7 Q. And what was the residency -- where was it at?

8 A. St. Elizabeth.

9 Q. What was the residency, tell us about the  
10 residency, please.

11 A. It was in general surgery.

12 Q. And how many years did you do your residency in  
13 general surgery at St. Elizabeth?

14 A. Five years.

15 Q. Are all surgery residencies that long, Doctor?

16 A. Some are longer. Five years is if there is no  
17 research or time taken off.

18 Q. So you went to medical school for four years?

19 A. I went to medical school for four years.

20 Q. And then you did a residency in general surgery  
21 for another five years, so you --

22 A. Right.

23 Q. -- had nine years of medical training?

24 A. Right.

25 Q. What did you do next, please?

00007

1 A. I did a fellowship in tissue engineering at the  
2 Center for Engineering and Medicine at Shriners Burn  
3 Center and Mass General Hospital.

4 Q. And how many years was that fellowship?

5 A. About two and a half years.

6 Q. Okay. And I got to 1998 through your five years  
7 of general surgery.

8 A. Right.

---

Witness\_ Nam Heui Kim - Vol. 1.txt: 7:19 - 9:1

And so tell us when your fellowship

20 in tissue engineering at Shriners and Mass General  
21 ended, please?

22 A. It ended in September of 2000.

23 Q. Thank you. And what did you do -- and then  
24 September 2000, you went to Brigham Hospital?

25 A. No. In July of 2002 I went to the Brigham  
00008

1 Hospital.

2 Q. And that was your surgical critical care  
3 fellowship?

4 A. Surgical critical care fellowship.

5 Q. And what did you do next?

6 A. Then I became assistant in surgery or also known  
7 as a fellow on the burn service at Mass General  
8 Hospital.

9 Q. And when you were the assistant in surgery at  
10 Mass General Hospital and also doing a fellowship  
11 there, was that -- were you also seeing and treating  
12 patients at Shriners at the time?

13 A. Yes.

14 Q. Tell us about the relationship, please, between  
15 Shriners and Mass General and Harvard Medical School.

16 A. Well, they're both teaching hospitals of Harvard  
17 Medical School. They -- the relationship is kind of  
18 difficult. They're almost -- they both have burn  
19 services. The Shriners only treats pediatric burns or  
20 almost only. There is -- there has been exceptions but  
21 they're fairly rare. And the Mass General treats the

Bartlett v Mutual

22 adults. The -- Shriners doesn't really have an ED. So  
23 even the pediatrics will go through the Mass General ED  
24 before they get to Shriners.

25 Q. You're referring to the emergency department?  
00009

1 A. Right. Emergency department, ED.

---

Witness\_ Nam Heui Kim - Vol. 1.txt: 9:2 - 10:18

2 Q. Got it. Tell us, please, about what types of  
3 surgeries you did while you were assistant in surgery  
4 at Mass General.

5 A. I did mostly excisions and debridements.

6 Q. And were most of these excisions and  
7 debridements virtually all on burn patients?

8 A. Yes.

9 Q. How long -- I've seen records, Dr. Kim, which  
10 both list you as an attending physician and some list  
11 you as not the attending physician while you were at  
12 Mass General in relation to Karen Bartlett.

13 A. Right.

14 Q. Can you please explain that to us.

15 A. The Mass General has a different system than a  
16 lot of hospitals, and fellows there are sometimes also  
17 assistants in surgery, okay, and they are --  
18 essentially have attending privileges, all right. So  
19 they have the right to admit, to treat, to operate on  
20 their own.

21 Q. And for the ladies and gentlemen of the jury who  
22 might have never heard of the difference between an  
23 attending and a fellow with or without admission or  
24 treatment or operation privileges, please explain what  
25 those things are.

00010

1 A. Fellows tend to be in training. Many places the  
2 fellows will not have admitting privileges, will not  
3 have the right to operate on their own, and to treat on  
4 their own except under the supervision of an attending.  
5 So an attending is someone who has ultimate  
6 responsibility of the patient.

7 Q. Were you one of the treating physicians for  
8 Karen Bartlett at Mass General Hospital in 2005?

9 A. Yes, I was.

10 Q. When you were one of Karen Bartlett's treating  
11 physicians, did you have full admission and treatment  
12 and operation privileges just like Dr. Ryan and Dr.  
13 Schultz and Dr. Sheridan?

14 A. Yes, I did.

15 Q. And were the four main doctors, if you will, at  
16 Mass General when Karen Bartlett was treated yourself,  
17 Dr. Kim, Dr. Schultz, Dr. Sheridan, and Dr. Ryan?

18 A. Right

Objections:  
-611 (includes 611(c))

Ruling: Overruled.

---

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 10, Line 22

22 A. Yes

Objections:  
-611 (includes 611(c))

Ruling: Overruled.

---

Witness\_ Nam Heui Kim - Vol. 1.txt: 11:4 - 11:15

tell us, then, how it worked on a

5 day-to-day basis or week-to-week basis in terms of who  
6 was in charge of the patient like Karen Bartlett on a

Bartlett v Mutual

7 given day between the four of you, please.  
 8 A. Well, if -- if any of the -- if Rob Sheridan or  
 9 Colleen Ryan or Dr. John Schultz, if any of them were  
 10 there, I would say that they had the say in whatever  
 11 was going on. If they were absent, just by default it  
 12 would be myself.  
 13 Q. And their absence created a lot of times where  
 14 you were Karen's primary physician, correct?  
 15 A. Yes.

Objections:  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 11:19 - 11:21

19 Q. You did a number of or participated in a number  
 20 of line placements for Karen Bartlett while you were  
 21 there, correct?

Objections:  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 12:2 - 12:17

I know I was involved with at least one.  
 3 I don't recall how many exactly I was involved with.  
 4 Q. Fair enough. What is a line placement, please,  
 5 Doctor?  
 6 A. Well, patients who are, you know, fairly sick,  
 7 and she was fairly sick, they would need access, IV  
 8 access for -- a venous access for fluids and for  
 9 medications and sometimes for blood draws. And often  
 10 peripheral for the access available on their arms would  
 11 be insufficient or we would run out of access, meaning  
 12 that the veins would eventually just sort of blow out  
 13 and not be appropriate for use for intravenous lines,  
 14 or IVs. So then we would have to put in a central line  
 15 which would go into one of the larger veins of the  
 16 body, typically it would go into the internal jugular,  
 17 the subclavian, or the femoral veins.

Witness\_ Nam Heui Kim - Vol. 1.txt: 12:25 - 13:24

Did you do one  
 00013

1 or more bronchoscopies on Karen Bartlett while you were  
 2 a treating physician of hers?  
 3 A. Yes, I did.  
 4 Q. What is a bronchoscopy?  
 5 A. A bronchoscopy is performed by taking a flexible  
 6 scope, okay, so a fiberoptic scope and typically taking  
 7 down the endotracheal tube, that's the breathing tube,  
 8 or a tracheostomy tube, depending on what they have,  
 9 and sometimes it can also be done without a tube at all  
 10 in an awake patient. And essentially you thread it  
 11 down to look at their airway, usually the trachea and  
 12 the more distal airways like the main stem airways  
 13 which branches to the right and left lung and sometimes  
 14 you can get to some of the secondary airways and  
 15 essentially to -- it's done for either just cleaning it  
 16 out or what we sometimes call toileting, essentially  
 17 cleaning it out, or to look for diagnostic purposes.  
 18 Q. What was the main condition for which Karen  
 19 Bartlett needed treatment at Mass General burn hospital  
 20 when you were one of her physicians?  
 21 A. Well, she was diagnosed with TENS.  
 22 Q. And what is that, please, Doctor?  
 23 A. Oh, toxic epidermal necrolysis, essentially

Bartlett v Mutual

24 where the body just sloughs off part of their skin.

Witness\_ Nam Heui Kim - Vol. 1.txt: 14:23 - 15:17

Doctor, have I just placed

24 on the screen a copy of the resume you were kind enough  
25 to provide me?

00015

1 A. Yes.

2 Q. Okay. Thank you. And this shows your medical  
3 degree --

4 A. Right.

5 Q. -- and your two prior degrees in mechanical  
6 engineering and bioengineering, correct?

7 A. Right.

8 Q. And it shows now that you're or in -- excuse me,  
9 it shows that in '05 and '06, you were a trauma fellow  
10 at Hartford Hospital in Connecticut?

11 A. Right.

12 Q. Is that after Mass General?

13 A. That is after Mass General.

14 Q. So when you were treating Ms. Bartlett, that's  
15 when you were a burn fellow and clinical fellow in  
16 surgery at Mass General Hospital, correct?

17 A. Right

Witness\_ Nam Heui Kim - Vol. 1.txt: 17:15 - 17:18

both when you

16 were at Mass General and now in saving lives that but  
17 for treatment would not be saved?

18 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 17:25 - 18:3

Have I thanked you on

00018

1 Karen Bartlett's behalf for your excellent --

2 A. Yes.

3 Q. -- and life-saving care and treatment?

Objections:

-402

-403

-611 (includes 611(c))

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 18:8 - 19:8

Dr. Kim,

9 I'm going to show you a record and represent to you

10 it's a record that happened three days before Karen

11 Bartlett saw Dr. John Schultz in 2006, and it's a

12 record of Karen Bartlett's primary care physician,

13 Dr. Leo Lane. And Dr. Lane states, in part, "When

14 she," referring to Karen, "speaks with a specialist in

15 Boston, I have requested," that'd be the doctor, "that

16 she ask him if she is at increased risk in the future

17 for Stevens-Johnson syndrome if we need to be concerned

18 about any of the drug classes as I just spoke with Ms.

19 Bartlett that our concern will be that some day we will

20 need to give her medication and just the concern where

21 she has already had this once."

22 And then show you that three days after this --

23 Karen's doctor made this request, Dr. Schultz saw Karen

24 and he documented that Karen's med alert bracelet needs

25 to add NSAIDs/sulindac, and he also said, "Other meds

00019

Objections:

-402

-403

-611 (includes 611(c))

-Foundation

-702 (improper opinion from  
non-retained expert)

Ruling: Sustained.

## Bartlett v Mutual

1 probably okay unless they have a chemical structure  
 2 resembling sulindac."  
 3 Do you interpret Dr. Schultz's words that she  
 4 should -- "other meds probably okay unless they have a  
 5 chemical structure resembling sulindac" to mean that  
 6 Dr. Schultz has concluded that sulindac was the cause  
 7 of Karen Bartlett's TEN that you treated her for along  
 8 with Dr. Schultz and others?

Witness\_ Nam Heui Kim - Vol. 1.txt: 19:15 - 19:20

15 A. Most likely the sulindac is suspected of being  
 16 the most likely cause of her TENS, and therefore all  
 17 medications in the same family of sulindac and -- or  
 18 with a similar structure of sulindac should be avoided.  
 19 That's actually very, very typical of medication  
 20 allergies.

Objections:

-702 (improper opinion from  
 non-retained expert)  
 -402  
 -403

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 20:18 - 21:9

These pages that I'm

19 showing you now, Dr. Kim, are all medication  
 20 administration records from Mass General while you were  
 21 one of her treating physicians. And I did write on  
 22 them. I wrote a number on the top of every page and  
 23 the reason I did that is just so we would know how many  
 24 pages all say: Adverse reaction to drugs, either  
 25 sulindac or, at the very end, we'll get to sulindac and  
 00021

1 NSAIDs.

2 And was it your -- did you have knowledge while  
 3 you were treating Ms. Bartlett that sulindac was a drug  
 4 that had been either at the top of the differential or  
 5 identified to be the most likely causative agent of her  
 6 TEN as according to these Mass General medication  
 7 administration records sulindac is listed as the drug  
 8 that she had an adverse reaction to?

9 A. Yes.

Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Sustained as to lines  
 20:18 through 21:1. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 21:13 - 21:17

knowledge that

14 sulindac was the drug that was concluded to be the one  
 15 most likely to be the precipitating or causative agent  
 16 in Karen Bartlett's TEN from both her history and from  
 17 these medication administration records?

Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 21:21 - 22:5

Well, I wouldn't just

22 take it from the medical records but from  
 23 her history, it is the -- the most recent  
 24 medication that she had that has been known  
 25 to potentially cause TENS.

00022

1 Q. (By Mr. Jensen) To your knowledge based upon  
 2 your care and treatment of Karen Bartlett, was any  
 3 medication or drug other than sulindac ever identified  
 4 as a possible causal agent in her TEN as opposed to  
 5 sulindac?

Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 22:8 - 22:13

**Bartlett v Mutual**

8 THE WITNESS: Not to my knowledge.  
 9 Q. (By Mr. Jensen) Restated, based upon your care  
 10 and treatment of Karen Bartlett, sulindac was the sole  
 11 identified drug to be the one that explained why she  
 12 had TEN and why she was in the burn unit; is that  
 13 correct?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 22:16 - 22:20

16 THE WITNESS: At the time, yes.  
 17 Q. (By Mr. Jensen) And did your understanding that  
 18 sulindac was the drug that most likely caused Karen's  
 19 TEN ever change or did it remain the same?  
 20 A. Remained the same.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 22:25 - 23:4

25 A. Remained the same.  
 00023  
 1 Q. Thank you. And did you know in 2005 that  
 2 sulindac was in the class of drugs called nonsteroidal  
 3 anti-inflammatory drugs or, for short, NSAIDs?  
 4 A. Yes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 23:15 - 23:18

15 Q. (By Mr. Jensen) He's got a good point. As of  
 16 2005, why would it have been the case as you pointed  
 17 out when sulindac was concluded to have caused her TEN  
 18 to avoid other drugs in that class, please?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 23:21 - 24:9

21 THE WITNESS: Because they often have  
 22 similar mechanisms of action and similar  
 23 chemical forms, and therefore we do not  
 24 want to risk exposure of a medication in  
 25 the same family to someone who had an  
 00024  
 1 adverse reaction.  
 2 Q. (By Mr. Jensen) Is the following correct  
 3 statement, Dr. Kim: To your knowledge in 2005 that  
 4 while sulindac was concluded by you and Dr. Ryan, I'll  
 5 represent to you, to be the medication that had caused  
 6 Karen Bartlett's TEN, you didn't know whether or not  
 7 other NSAIDs would have an adverse reaction with Karen  
 8 but you avoided them to be safe?  
 9 A. Yes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Sustained as to "and  
 Dr. Ryan, I'll represent to you."  
 Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 24:12 - 24:16

12 THE WITNESS: Yes.  
 13 Q. (By Mr. Jensen) Thank you. Is that your  
 14 understanding of why Dr. Schultz said: Avoid sulindac  
 15 and any drugs with a chemical structure similar to  
 16 sulindac?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 24:18 - 25:7

18 THE WITNESS: Yes. It's very  
 19 standard.

## Bartlett v Mutual

20 Q. (By Mr. Jensen) Tell us about what happens to  
 21 someone's skin when they have TEN, please, Dr. Kim.  
 22 A. Well, the skin tends to slough off, it first  
 23 blisters and then sloughs off. The adhesions of the  
 24 skin to the underlying base layer is disrupted. I  
 25 don't think it's actually clearly understood exactly  
 00025  
 1 why, but it's disrupted. So it's essentially like a  
 2 burn.  
 3 Q. Were you involved in treating Karen with  
 4 Acticoat, silver nitrate, aqua gel, and other  
 5 techniques and materials to attempt to treat her skin  
 6 wounds?  
 7 A. Yes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from  
 non-retained expert)

Ruling: Sustained as to lines  
 24:18 through 25:2. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 25:23 - 27:4

23 Q. Without checking your records, do you recall  
 24 whether or not xenografts were also used with  
 25 Ms. Bartlett?  
 00026  
 1 A. I believe they were.  
 2 Q. And what is a xenograft, please, Doctor?  
 3 A. A xenograft is skin from another animal other  
 4 than a human. Typically at Mass General, we used pig  
 5 skin.  
 6 Q. Tell us, please, about the teams when -- when  
 7 you were Karen's primary physician on any given day,  
 8 you used the word "by default." I'll use the words  
 9 "Karen was lucky enough to have you that day." Tell us  
 10 about the team that you worked with in treating Karen,  
 11 please.  
 12 A. Well, there was always the physician team which  
 13 included myself or another physician, attending  
 14 physician as well as a resident team, okay. There was  
 15 a number of nursing members of the team. There was  
 16 also psychiatry involved. Also, Mass General utilized  
 17 physical therapy and occupational therapy team as well.  
 18 And I'm sure there were nursing support systems such  
 19 as, you know, a personal care provider of some kind.  
 20 I'm not sure, can't remember exactly what they may have  
 21 called them at Mass General but these are people who  
 22 are not certified as nurses but can help them.  
 23 So there's, you know, the team at Mass General  
 24 is actually quite extensive. Oh, and nutritionists,  
 25 there's always a nutritionist on the Mass General team.  
 00027  
 1 Q. How would you describe Dr. Schultz and  
 2 Dr. Sheridan's and Dr. Ryan's standing, if you will, or  
 3 reputation on a national or international basis in the  
 4 burn community for being excellent at what they do?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -Calls for speculation

Ruling: Sustained as to "I'll use  
 the words 'Karen was lucky  
 enough to have you that day'"  
 and as to lines 27:1 through  
 27:4. Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 27:7 - 27:9

7 Q. (By Mr. Jensen) Based upon your knowledge in  
 8 2005?  
 9 A. They --

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 27:11 - 27:17

11 THE WITNESS: They're experts in  
 12 their field. They're very well known.

## Bartlett v Mutual

13 Q. (By Mr. Jensen) To your knowledge in 2005, are  
 14 all three of them, Dr. Schultz, Dr. Ryan, and  
 15 Dr. Sheridan, to your knowledge, regarded as some of  
 16 the premier burn surgeons in the world?  
 17 A. Yes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 27:19 - 27:20

19 Q. (By Mr. Jensen) No doubt of that in your mind?  
 20 A. No doubt.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 28:2 - 28:8

Let me show you a record of  
 3 Dr. Ojikutu and it's dated March 8, 2005, so after  
 4 Karen's been there approximately a month and four days.  
 5 She got there on February 4. And Dr. Ojikutu  
 6 documents, in part, "45-year-old female with TEN  
 7 questioning NSAIDs in burn unit." See that, Doctor?  
 8 A. Mm-hmm.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -improper publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 28:10 - 28:16

10 THE WITNESS: Yes.  
 11 Q. (By Mr. Jensen) And just with that line, would  
 12 you understand from reading that that this infectious  
 13 disease doctor had NSAIDs at the top of their  
 14 differential and was not including anything else in  
 15 their differential as the potential cause of Karen  
 16 Bartlett's TEN?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -improper publishing  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 28, Line 19

19 THE WITNESS: Yes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -improper publishing  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 29:2 - 29:11

Now I'm going to show you  
 3 another note, this one typed up by Dr. Ojikutu or  
 4 somebody typed up for her. It's Exhibit 26 and it's  
 5 about two weeks later on March 24, a little more than  
 6 that. And she lists allergies: NSAIDs, if you can see  
 7 that. There you go. There's the date. And she goes  
 8 on. On her fourth page, there's Dr. Ojikutu's  
 9 signature, and her impression is, "This is a  
 10 45-year-old woman with TEN likely secondary to NSAIDs."  
 11 Did I read that correctly, Doctor?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -improper publishing  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 29:13 - 29:18

13 THE WITNESS: You did read that  
 14 correctly.  
 15 Q. (By Mr. Jensen) Would it have been your  
 16 interpretation of those words that this doctor was now  
 17 concluding that Karen Bartlett's TEN was likely  
 18 secondary to NSAIDs?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -improper publishing  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 29:21 - 29:24

21 THE WITNESS: That was they are  
 22 likely secondary to NSAIDs. I don't think  
 23 there's any conclusion there but that's

Bartlett v Mutual

Objections:  
-402  
-403  
-611 (includes 611(c))  
-improper publishing  
-702 (improper opinion from non-retained expert)

Ruling: Sustained.

24 their leading suspect.

Witness\_ Nam Heui Kim - Vol. 1.txt: 30:7 - 30:11

7 Q. (By Mr. Jensen) And NSAIDs -- of all of the  
8 NSAIDs, the only one you knew of as Karen Bartlett's  
9 treater that she had taken was sulindac, correct?  
10 A. Yes.  
11 Q. So do you --

Objections:  
-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 30:14 - 30:17

14 Q. (By Mr. Jensen) -- interpret likely as this  
15 doctor saying that the most likely cause is NSAIDs and  
16 the only one you know of is sulindac?  
17 A. Yes.

Objections:  
-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-retained expert)  
-Calls for speculation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 30:21 - 31:10

21 A. Yes.  
22 Q. Thank you. Karen Bartlett was actually  
23 readmitted to Mass General after being at Northeast  
24 Rehab Hospital for a number of days, and Dr. Schultz  
25 wrote or signed Karen Bartlett's second discharge  
00031  
1 summary, which I'm going to show to you. I'll find it.  
2 Sorry, Doctor. There we go.  
3 This is Exhibit 117 for the record. Now,  
4 Dr. Schultz authored Karen Bartlett's second discharge  
5 summary and it's Exhibit 117 and it shows a second  
6 discharge date of 4/27/05 and a second admission date  
7 of 4/18/05. And there's Dr. Schultz's electronic  
8 signature on the last page dictated by Nurse  
9 Practitioner Sally Morton. Did you know Sally Morton?  
10 A. Yeah.

Objections:  
-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 31:11 - 31:19

And  
12 Dr. Schultz lists allergies as sulindac and NSAIDs.  
13 A. Mm-hmm.  
14 Q. Based upon seeing his other note, was it --  
15 would it be your interpretation of this second  
16 discharge summary that Dr. Schultz was still concluding  
17 that sulindac was the most likely cause and also  
18 instructing by listing an allergy for NSAIDs that she  
19 should avoid that entire class of drugs?

Objections:  
-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 31:22 - 32:18

22 THE WITNESS: Yes.  
23 Q. (By Mr. Jensen) Sally Morton also, like she  
24 apparently dictated this discharge summary for  
25 Dr. Schultz, she dictated the first discharge summary  
00032  
1 for you, correct, Doctor?  
2 A. Yes.  
3 Q. Okay. And tell us who Sally Morton is, please.  
4 A. She's a nurse practitioner on the burn unit.  
5 She does a lot of the things that makes -- made the  
6 life much easier on the physicians including --  
7 including dictating discharge summaries and other

Objections:  
-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

## Bartlett v Mutual

8 clinical duties as well.

9 Q. I'm going to show you three documents in  
10 succession now, Doctor, and talk about the language in  
11 each of them and ask you some questions about it. The  
12 first one I'm going to show you is Dr. Austen's  
13 February 18, '05 consult, and Dr. Austen states, in  
14 part, "She was," for Karen of course, "She was  
15 transferred to" -- Northeast -- excuse me, "New England  
16 Medical Center February 4 where biopsy revealed TEN  
17 attributed to NSAIDs versus Chinese food."  
18 Do you see that?

Objections:

-402  
-403  
-611 (includes 611(c))  
-Foundation  
-702 (improper opinion from non-  
retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 32:20 - 32:25

20 THE WITNESS: Yes.

21 Q. (By Mr. Jensen) In the second document I'm  
22 going to show you is a couple weeks later and it's an  
23 ID consult. It doesn't have the similar language,  
24 Doctor. It has the exact same language. Please tell  
25 me if that's true.

Objections:

-402  
-403  
-611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 33:13 - 33:20

13 Q. (By Mr. Jensen) The second document I'm going  
14 to show you, Dr. Kim, is on March 4, 2005. It also  
15 reads, "She was transferred to NEMC 2/4 where biopsy  
16 revealed TENS attributed to NSAIDs versus Chinese  
17 food."

18 Does that appear to be the identical language  
19 that Dr. Austen wrote down a couple weeks earlier?  
20 A. Yes.

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-  
retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 33:22 - 34:2

22 Q. (By Mr. Jensen) And then in the discharge  
23 summary that Sally Morton dictated for you, it says:  
24 She was transferred, I'll abbreviate, to NEMC, on 2/4  
25 where a biopsy revealed, I'll abbreviate, TEN syndrome  
00034  
1 attributed to NSAIDs versus Chinese food.  
2 Is that what it says?

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-  
retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 34:4 - 34:8

4 THE WITNESS: Yes.

5 Q. (By Mr. Jensen) Please explain how you believe  
6 that sentence got in your discharge summary and whether  
7 or not it relates to these prior statements which are  
8 nearly identical?

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-  
retained expert)  
-Improper publishing  
-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 34:11 - 35:23

11 THE WITNESS: Well, typically, what  
12 happens is when a patient is transferred  
13 from one hospital to the other hospital,  
14 not only are they -- come with some sort of  
15 a summary of their hospitalization from the  
16 previous hospital, but they also come with  
17 a verbal sign-out from another physician at  
18 the previous hospital, whether it's an  
19 attending versus a resident. But they come  
20 out with some sort of verbal -- verbal

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-  
retained expert)  
-Improper publishing  
-Foundation

Ruling: Sustained as to lines  
35:12 through 35:23. Otherwise  
overruled.

## Bartlett v Mutual

21 information that's not on paper.  
 22 And what's happens is typically you  
 23 include their incoming history of the  
 24 current illness along with their transfer.  
 25 So if New England Medical Center was  
 00035  
 1 unclear as to what the potential cause was  
 2 and they said: Well, you know, she had  
 3 Chinese food and had a -- had some belly,  
 4 you know, abdominal complaints and she also  
 5 took a nonsteroidal anti-inflammatory for  
 6 that, that would most likely get into the  
 7 history and physical on her admission at  
 8 the accepting hospital and often will also  
 9 get into the discharge summary of her  
 10 discharge from that particular hospital  
 11 that she has been transferred to.  
 12 Q. (By Mr. Jensen) Okay. If you had  
 13 hypothetically been asked on this date, April 14, '05:  
 14 Dr. Kim, do biopsies attribute cause to TEN, what would  
 15 your answer have been?  
 16 A. Biopsies do not determine cause.  
 17 Q. Okay. Because it was your belief and  
 18 understanding, of course, correctly in 2005 that  
 19 biopsies do not attribute cause, do you agree that to  
 20 the extent this is repeated in the records by  
 21 Dr. Austen and this infectious disease fellow and in  
 22 the discharge summary, that's not a correct statement?  
 23 A. No, it's not correct.

Witness\_ Nam Heui Kim - Vol. 1.txt: 36:8 - 36:16

8 Q. (By Mr. Jensen) And first, let me ask you,  
 9 Dr. Kim, did you ever conclude in your care and  
 10 treatment of Karen Bartlett that her TEN was attributed  
 11 to Chinese food?  
 12 A. No.  
 13 Q. Okay. Did you ever believe there was any  
 14 realistic possibility that her TEN was attributed to  
 15 Chinese food or Chinese food poisoning or the stomach  
 16 flu or gastroenteritis?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-  
 retained expert)  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 36:19 - 36:24

19 THE WITNESS: No.  
 20 Q. (By Mr. Jensen) Why was it never your  
 21 conclusion that there was any realistic possibility  
 22 that any of those things could have caused it, Chinese  
 23 food caused it, Chinese food, Chinese food poisoning,  
 24 gastroenteritis, and stomach flu?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-  
 retained expert)  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 37:2 - 37:4

2 THE WITNESS: Well, those -- those  
 3 mechanisms are not known in the literature  
 4 to cause TENS.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 37:6 - 38:6

Do you  
 7 frequently get discharge summaries dictated for you  
 8 that you review to some extent and then electronically

## Bartlett v Mutual

9 sign?

10 A. Yes.

11 Q. Okay. Tell us how carefully you review  
12 discharge summaries while you were at Mass General in  
13 2005 to make sure every sentence and every word is  
14 accurate.

15 A. I just make sure that they're not huge bloopers.

16 Q. Why is that the case, Doctor?

17 A. Well, there are so many of these summaries that  
18 you just want to give whoever's accepting the patient a  
19 general idea of what has happened, what their diagnoses  
20 are, and how they were treated, what complications they  
21 may have had. And if that suffices without major  
22 errors, we're -- you know, I generally sign them  
23 without looking through the details of the grammar.

24 For instance, this sentence would be correct if  
25 there was a period and a few additional words. For  
00038

1 instance, if she said: She was transferred to New  
2 England Medical Center on February 4 where a biopsy  
3 revealed toxic general -- epidermal necrolysis  
4 syndrome, period. The TENS was attributed to possible  
5 NSAIDs versus Chinese food at New England Medical  
6 Center, period.

Objections:

-402

-403

-702 (improper opinion from non-  
retained expert)

-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 38:7 - 38:17

If I were to represent

8 to you that I've had the opportunity to ask questions  
9 of then a third-year resident at Tufts New England  
10 Medical Center and he testified, Dr. Deon Wolpowitz, to  
11 the following: A, he never attributed Karen Bartlett's  
12 TEN to Chinese food; and B, to his knowledge -- and  
13 Karen Bartlett was only there a day. It's a very small  
14 medical record. And B, to his knowledge, no one at  
15 Tuft's New England Medical Center ever attributed Karen  
16 Bartlett's TEN to Chinese food, would that surprise you  
17 in 2005?

Objections:

-402

-403

-702 (improper opinion from non-  
retained expert)

-Foundation

-611 (includes 611(c))

-801

-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 38:20 - 38:24

20 THE WITNESS: It -- it wouldn't  
21 surprise me.

22 Q. (By Mr. Jensen) Why would it not surprise you  
23 that no one at Tufts ever thought Karen Bartlett got  
24 TEN from Chinese food?

Objections:

-402

-403

-702 (improper opinion from non-  
retained expert)

-Foundation

-611 (includes 611(c))

-801

-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 39:1 - 40:7

1 THE WITNESS: Well, it is like that  
2 telephone game where someone makes a call  
3 to someone else, relays some information,  
4 and then someone -- that person makes a  
5 call to another person, a third person, and  
6 then that third person makes a call to a  
7 fourth person and then it gets back around  
8 after a few people to the first person who  
9 originated that they called and gave the  
10 information and you find that the  
11 information has been a little garbled and  
12 not completely recognizable anymore.  
13 So if someone at New England Medical

Objections:

-402

-403

-702 (improper opinion from non-  
retained expert)

-611 (includes 611(c))

-801

-802

Ruling: Sustained as to lines  
39:1 through 40:2. Otherwise  
overruled.

## Bartlett v Mutual

14 Center said: Well, you know, this all  
 15 started when she had Chinese food and had a  
 16 stomach upset and she took some, you know,  
 17 some medications for that and then this  
 18 happened, it could easily be misinterpreted  
 19 by the receiving person to have said:  
 20 Well, they thought it was attributed to  
 21 either that Chinese food or the medications  
 22 she took for her stomach upset.

23 So it is unfortunately why a written  
 24 record is preferable in many ways to a  
 25 verbal record. However, I think often the

00040

1 verbal record has more depth of information  
 2 than the written one.

3 Q. (By Mr. Jensen) I needed to ask you, has all  
 4 the testimony you've been providing today and do you  
 5 agree that all the testimony you will provide today  
 6 will be based upon a reasonable degree of medical or  
 7 scientific certainty?

Witness\_ Nam Heui Kim - Vol. 1.txt: 40:21 - 40:22

21 THE WITNESS: Reasonable amount of  
 22 scientific certainty, yes.

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

Ruling: Overruled, as far as  
 grounds asserted by the  
 defendant are concerned.

Witness\_ Nam Heui Kim - Vol. 1.txt: 40:24 - 41:3

was it your

25 conclusion when you were treating Karen Bartlett in  
 00041

1 2005 to a reasonable degree of medical and scientific  
 2 certainty that the cause of her TEN was her prior  
 3 ingestion of sulindac?

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 41:8 - 41:18

8 THE WITNESS: Yes.

9 Q. (By Mr. Jensen) To your knowledge, was there  
 10 anyone at Mass General who disagreed with you, and I'll  
 11 represent to you Dr. Ryan, who yesterday testified that  
 12 it was her belief at the time that sulindac was the  
 13 most likely cause of Karen Bartlett's TEN, and asking  
 14 you to accept that as true for purposes of my question,  
 15 to your knowledge, Dr. Kim, was there anyone at Mass  
 16 General Hospital that disagreed with your belief and  
 17 Dr. Ryan's belief that sulindac was the most likely  
 18 cause of Karen Bartlett's TEN?

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-Foundation

Ruling: Sustained as to lines  
 41:11 through 41:14, and as  
 to "and Dr. Ryan's belief."  
 Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 41:20 - 41:22

20 THE WITNESS: No.

21 Q. (By Mr. Jensen) To your knowledge, there was  
 22 not?

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-801

-802

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 41:24 - 41:25

24 THE WITNESS: Not that was made known  
 25 to me.

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-801

-802

-Calls for Speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 44:3 - 45:13

## Bartlett v Mutual

3 Q. Do you believe that February 12, based upon your  
4 recollection, was the first time you saw Karen Bartlett  
5 or was the first time you were directly involved in her  
6 care?

7 A. It may -- I really wouldn't be able to know  
8 because if notes had been written by another physician,  
9 another -- if it had been written by either Dr. Ryan,  
10 Dr. Schultz, or Dr. Sheridan, I may still have been  
11 involved but they would have done all the  
12 documentation.

13 Q. And this day you spoke of an SVT yesterday.  
14 What is that, please?

15 A. Supraventricular tachycardia.

16 Q. And you say, "Self-Limited episode of SVT  
17 yesterday without hemodynamic instability." What does  
18 that mean?

19 A. That means she had a fast heart rate but her  
20 blood pressure was okay.

21 Q. Did you ever reach any conclusions or make any  
22 assessments in your mind as to what was causing or  
23 precipitating Karen's SVTs?

24 A. I do not document it but I suspect that from  
25 this entire case, that most likely one of our leading  
00045

1 causes would be either dehydration or pain or a  
2 combination of both.

3 Q. Okay. And why would either dehydration or pain  
4 or a combination cause an SVT, please, Doctor?

5 A. Well, when someone is dehydrated, their  
6 circulating blood volume decreases and in order to make  
7 what blood you have go around sufficiently, people will  
8 often develop a tachycardia if there is -- if they are  
9 able to mount that response. And pain causes a lot of  
10 people to become tachycardic.

11 Q. And tachycardic means what, please?

12 A. Fast heart rate. It's a heart rate a hundred or  
13 above.

Witness\_ Nam Heui Kim - Vol. 1.txt: 45:18 - 45:21

As of 2005 why did

19 pain cause a lot of people as you just testified to  
20 have a high heart rate, in particular Karen Bartlett  
21 maybe?

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-retained expert)  
-Foundation  
-Calls for Speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 45:24 - 46:15

24 THE WITNESS: It's part of the  
25 sympathetic response.

00046

1 Q. (By Mr. Jensen) Fair to say I provided you some  
2 Mass General medical records before we began here today  
3 so you could refresh your recollection about your care  
4 and treatment of Karen Bartlett?

5 A. Yes.

6 Q. Fair to say we had one substantive conversation  
7 regarding your care and treatment of Karen Bartlett?

8 A. Yes.

9 Q. Do you recall telling me in that conversation  
10 about Karen's chart that something about a fight or  
11 flight mechanism?

12 A. Yes. Well, that's --

Objections:

-402  
-403  
-611 (includes 611(c))  
-702 (improper opinion from non-retained expert)  
-Foundation  
-Calls for Speculation

Ruling: Sustained as to  
lines 46:9 through  
46:15. Otherwise  
overruled.

## Bartlett v Mutual

13 Q. Tell us what that -- tell us what a fight or  
 14 flight mechanism is in relation to what we're  
 15 discussing now of pain and SVTs.

Witness\_ Nam Heui Kim - Vol. 1.txt: 46:18 - 47:17

18 THE WITNESS: Well, the flight or  
 19 fight, we also, more scientifically, we  
 20 call it the sympathetic response. So  
 21 essentially when your -- one is either  
 22 scared or are threatened in some manner,  
 23 the heart rate may go up. Most people, I  
 24 would say, the heart rate goes up. There  
 25 are some people who may actually go  
 00047

1 bradycardic, meaning the heart rate may go  
 2 down.

3 But it's not an uncommon response for  
 4 the heart rate to go up when someone is in  
 5 pain or is in fear or feels jeopardized in  
 6 some way.

7 Q. (By Mr. Jensen) Explain the relationship in  
 8 Karen Bartlett's specific situation and others like her  
 9 in 2005 of the fact that she was sedated in whole or in  
 10 part but still feeling pain?

11 A. Well, we do our best to decrease their pain and  
 12 we also do our best to decrease their awareness of  
 13 what's going on because when people are intubated and  
 14 in a critical care unit, it can be a very, very scary  
 15 thing, okay. So they are sedated for the anxiety and  
 16 the fear, and then pain medications for whatever pain  
 17 they might be in.

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for Speculation  
 -Improper publishing

Ruling: Sustained as to  
 lines 46:18 through  
 47:6. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 48:14 - 49:15

14 Q. (By Mr. Jensen) You go on in your note to say,  
 15 "Bolus area is sloughing." And then you say, "Will  
 16 plan for extubation when wounds have healed better and  
 17 mucosal involvement improving." Is that what you say?

18 A. I'm trying to find it -- yeah, "Bolus" -- "Bolus  
 19 areas are sloughing," okay, and "Plan for extubation  
 20 when wounds have healed better and mucosal involvement  
 21 improving," yes.

22 Q. Was she intubated at the time? Is that why  
 23 you're planning for an extubation?

24 A. Yes, she is intubated at this time.

25 Q. What does it mean to be intubated, Doctor?  
 00049

1 A. That is having a breathing tube in from --  
 2 typically into the -- through the mouth into the  
 3 trachea to allow ventilation with a mechanical  
 4 ventilator.

5 Q. Does that commonly in patients like Karen  
 6 Bartlett in 2005 create problems; in other words,  
 7 they're in pain, they're sedated, and they have a  
 8 breathing tube?

9 A. Yes. Well, the breathing tube itself can cause  
 10 pain and anxiety, and being on a mechanical ventilator  
 11 intubated can put the patient at risk for what we call  
 12 ventilator-associated pneumonia.

13 Q. And Karen is -- would Karen, in your estimation,  
 14 have been surviving at the time without mechanical

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for Speculation  
 -Improper publishing

Ruling: Sustained as to  
 lines 48:14 through  
 48:21, and as to lines  
 49:5 through 49:12.  
 Otherwise overruled.

## Bartlett v Mutual

## 15 ventilation?

Witness\_ Nam Heui Kim - Vol. 1.txt: 49:18 - 49:21

18 THE WITNESS: Unlikely.  
 19 Q. (By Mr. Jensen) Why is that true that it's  
 20 unlikely she could have lived on her own without  
 21 mechanical ventilation at the time?

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for Speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 49:24 - 50:8

24 THE WITNESS: Her mucosa was involved  
 25 including the mucosa of her airway, so  
 00050  
 1 essentially means that the TENS impacted  
 2 her airway as well. So essentially it's  
 3 like having burns in the airway.  
 4 Q. (By Mr. Jensen) Was that an ongoing medical  
 5 concern in Karen Bartlett's care and treatment by you  
 6 and the others at Mass General, the fact that she had  
 7 burning not only on her outside on her skin but she had  
 8 burning in her esophageal tract?

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for Speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 50:10 - 52:1

10 THE WITNESS: She had mucosal  
 11 involvement in her -- both probably her GI  
 12 and her -- and her respiratory tract.  
 13 Q. (By Mr. Jensen) And tell us how -- tell us why  
 14 that was an issue and how it was dealt with, please.  
 15 A. Well, it's an issue because the area can swell  
 16 and cause a mechanical obstruction for breathing,  
 17 that's one; two, it can cause debris that can impact  
 18 the airways and make, essentially, the airways cause  
 19 another obstruction of there. So you have two ways:  
 20 One, it is -- it can cause a mechanical swelling; and  
 21 two, the debris itself from the sloughing can cause  
 22 essentially junk in the airways that she would not be  
 23 able to breathe.  
 24 Q. And is that why you did what you referred to as  
 25 the toilet bronchoscopies?  
 00051  
 1 A. Yes. That's often done. It can also be done if  
 2 someone has a pneumonia or secretions that are so bad  
 3 that they need to be cleaned out because they're unable  
 4 to clean it out themselves.  
 5 Q. I flip to the first bronchoscopy report that has  
 6 your name on it and actually, as we mentioned earlier,  
 7 lists you as the attending physician, correct?  
 8 A. Yes.  
 9 Q. Okay. And perhaps in relation to this diagram,  
 10 you can please ex -- perhaps you can point your page  
 11 towards the jury, Doctor, forget about mine, and tell  
 12 the jury in relation to that diagram how a bronchoscopy  
 13 is done, please.  
 14 A. Okay. I'm actually holding it upside down  
 15 because it's easier to understand upside down for most  
 16 people. This is essentially the main airway, we call  
 17 the trachea, and this is the -- would be the left main  
 18 stem and this is the right main stem. And essentially  
 19 what happens is your endotracheal tube or your  
 20 breathing tube would be -- come down right about here,

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)  
 -Improper Publishing  
 -Calls for Speculation

Ruling: Overruled.

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21 and you would take the flexible fiberoptic bronchoscope  
 22 and thread it through the endotracheal tube and thread  
 23 it down these airways and suck up whatever mucus,  
 24 debris, blood, whatever may be there for whatever  
 25 patient is undergoing this procedure. Then you would  
 00052

1 come back up and then do the same for the other side

Witness\_ Nam Heui Kim - Vol. 1.txt: 52:12 - 52:14

12 Q. And why was -- why didn't one bronchoscopy solve  
 13 this problem for Karen Bartlett? Why did she need  
 14 multiple based upon your care and treatment?

Objections:

-402

-403

-611 (includes 611(c))

-702 (improper opinion from non-retained expert)

-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 52:17 - 54:5

17 THE WITNESS: Well, first of all, the  
 18 -- all the mucosa will not slough at once.  
 19 It will -- it will be doing that on a, you  
 20 know, it just doesn't happen all at once.  
 21 Just some will happen today, tomorrow, the  
 22 next day. And gradually when the process  
 23 finishes, then it's done. Also, you know,  
 24 when someone is intubated, they often have  
 25 a more difficult time clearing their  
 00053

Objections:

-402

-403

-611 (includes 611(c))

-702 (improper opinion from non-retained expert)

-Foundation

Ruling: Overruled.

1 secretions, any debris in there that they  
 2 might have, and so it may have to be done a  
 3 number of times until they improve.

4 Q. (By Mr. Jensen) On your 2/20 -- what is the  
 5 date of the second page, Doctor, please?

6 A. Second page?

7 Q. Yes, please.

8 A. 2/20.

9 Q. Thank you. So on February 20, you, under Neuro,  
 10 say, "Ativan IV," and tell us why you gave her Ativan  
 11 by intravenous method, please.

12 A. Well, Ativan is an anxiolytic. It's one of the  
 13 benzodiazepines. And we would be giving it IV either  
 14 for fast effect or we would be giving it IV because we  
 15 didn't have access to the GI tract.

16 Q. And then you say, "Methadone in place to prep  
 17 for wean." What does that mean, please?

18 A. Methadone is used for pain. And so essentially  
 19 we started her on Methadone, and if we want to wean --  
 20 we want to wean the morphine and Versed grips is  
 21 what's, I think, it's implying.

22 Q. Can you read your entry under GI, please.

23 A. "Still has extensive perioral lesions. Ongo  
 24 tube feeds."

25 Q. And perioral lesion is what, please?

00054

1 A. Lesions around the mouth.

2 Q. Were you involved in many decisions in your care  
 3 and treatment of Karen Bartlett as to how much and what  
 4 types of blood products or transfusions she needed?

5 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 54:6 - 54:19

Why

7 did Karen need blood transfusions?

## Bartlett v Mutual

8 A. Well, her -- I wouldn't be able to tell you  
 9 without the record exactly as to what she needed when,  
 10 but typically a person needs blood transfusions when  
 11 the hematocrit goes down for packed red blood cells.  
 12 For fresh frozen plasma, it might be as a volume  
 13 expander or because they're developing a coagulopathy  
 14 of some kind, meaning their inability to coagulate or a  
 15 compromise in their coagulation. So without  
 16 specific -- specifically what days and what days she  
 17 had the transfusions and what her blood work was at the  
 18 time, I can't tell you specifically exactly when and  
 19 why she needed something.

Objections:  
 -402  
 -403  
 -speculation  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 56:1 - 56:19

1 Q. Let's pick one out. The first day you  
 2 apparently saw Karen was February 12, and if you look  
 3 at the blood transfusions on the next day, she got 500  
 4 of albumin and it's page 685. We can flip to page 685.  
 5 Does that help you tell us why -- on Exhibit 141, if  
 6 you flip to page 685 --  
 7 A. 685?  
 8 Q. Yeah. The far right column is the page numbers.  
 9 A. Okay.  
 10 Q. Yes. And then when you flip to page 685, does  
 11 that help you tell us, Doctor, why she needed the  
 12 albumin that day or does that just report that she got  
 13 it?  
 14 A. Yeah, that's just to report that she got it. I  
 15 mean, essentially, I would say albumin is typically  
 16 used as a volume expander. So if her urine output was  
 17 low or if her blood pressure was low or if her heart  
 18 rate was high would be the typical situations where  
 19 albumin might be used.

Objections:  
 -402  
 -403  
 -speculation  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Non-responsive  
 -Improper publishing

Ruling: Sustained.  
 Speculation (Rule 602).

Witness\_ Nam Heui Kim - Vol. 1.txt: 56:22 - 57:1

22 Q. (By Mr. Jensen) And let's go now to your second  
 23 day was February 20 and stay on February 20. On that  
 24 day she got all three. She got packed blood cells,  
 25 fresh frozen plasma, and albumin. So was the very day  
 00057  
 1 you saw her, can you tell us why, please.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained  
 expert)  
 -Speculation  
 -Improper publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 57:3 - 57:14

3 THE WITNESS: Unfortunately this note  
 4 is not timed. 20.1 percent would be  
 5 considered adequate. It would be helpful  
 6 to know what her hematocrit was on the  
 7 19th. Her blood pressure was a little bit  
 8 soft, 105 over 68, which -- or 115 over 60.  
 9 Urine output was adequate, 40 to 80 CCs an  
 10 hour.  
 11 Q. (By Mr. Jensen) Here's Dr. Ryan's note from the  
 12 19th. It's page 143 of Exhibit 137. Does that help  
 13 you?  
 14 A. Okay.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 57:16 - 58:8

16 THE WITNESS: Okay. Her hematocrit

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17 was somewhat lower, 25.4 from the previous  
 18 day, from the day that I saw her, which was  
 19 28. So it's likely she got a blood  
 20 transfusion between when Dr. Ryan saw her  
 21 and when I saw her. And her blood pressure  
 22 was soft at 105, meaning that, you know,  
 23 typically 120 over 80 is a typical number.  
 24 And her urine output, at some point in  
 25 time, had gone to 30 CCs an hour which is a  
 00058

1 little bit low.

2 Q. (By Mr. Jensen) Okay. So in lay terms, why the  
 3 day you saw her did she get all three of these blood  
 4 products?

5 A. It is not absolutely clear to me but I suspect  
 6 she got them because her blood pressure was a little  
 7 bit soft, her urine output had dropped a little bit,  
 8 and -- and her hematocrit was a little bit low.

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing  
 -Speculation

Ruling: Sustained.  
 Speculation (Rule 602).

Witness\_ Nam Heui Kim - Vol. 1.txt: 58:22 - 59:7

22 Q. So does that note tell us that the -- at least  
 23 part of the reason she needed it -- that blood  
 24 transfusion for was because her mouth was bleeding from  
 25 TEN?  
 00059

1 A. Well, my note documents that she got FFP at the  
 2 time for the bleeding.

3 Q. In her mouth?

4 A. Perioral, around her mouth, yes.

5 Q. Let's go to your next note, please, Doctor, of  
 6 March 2 and there under the exam, do you say, "Sedated  
 7 but agitates easily"?

## Objections:

-402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 59, Line 10

10 A. Yes

## Objections:

-402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 59:13 - 59:25

And then you also

14 say, "Wounds" -- "Wounds back very oozy on Acticoat."  
 15 What --

16 A. Yes.

17 Q. What does that mean?

18 A. It probably means there was -- there was some  
 19 bleeding from the back, not discrete bleeding like a  
 20 vessel bleeding but just oozy, just, you know, just  
 21 sort of a low grade sort of a blood loss from the back.

22 Q. And then under Neuro, do you say, "Sedated on  
 23 Dilaudid and Versed," and those are both to -- Dilaudid  
 24 is a pain medication and Versed is a sedative, correct?

25 A. Right.

## Objections:

-611 (includes 611(c))  
 -Speculation  
 -Improper publishing

Ruling: Sustained.  
 Speculation (Rule 602).

Witness\_ Nam Heui Kim - Vol. 1.txt: 60:2 - 60:5

2 Q. (By Mr. Jensen) And then you say, "Will  
 3 increase pain medication for possibility of pain  
 4 causing tachycardia"?

5 A. Yes.

## Objections:

-402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 60:8 - 60:10

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Were

9 you concerned that Karen was having fight or flight  
10 reactions to the totality of her treatment?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (includes 611(c))  
-Calls for speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 60:13 - 60:15

13 THE WITNESS: I was concerned that  
14 she may be in some pain and that might be  
15 causing tachycardia.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (includes 611(c))  
-Calls for speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 61:3 - 61:12

3 Q. So far in these first three days, February 12  
4 and 20th and March 2, in lay terms give us a general  
5 picture of what your medical concerns are regarding  
6 Karen.

7 A. Well, it looks like she is in respiratory  
8 failure on a ventilator. She has wounds that are  
9 oozing to the point where some clinician at some time  
10 felt she needed both FFP to support her ability to  
11 coagulate and some blood from bleeding. Generally,  
12 she's -- she's very sick.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 61:19 - 62:23

19 Q. (By Mr. Jensen) Please tell us from a lay  
20 perspective how she's doing two days later when you see  
21 her on March 4.

22 A. On March 4 -- okay. Well, she has a fever and  
23 she's requiring blood pressure support with Levophed.  
24 She remains tachypneic. She remains on the ventilator.  
25 Urine output is acceptable. So essentially she -- it  
00062

1 sounds like over the few days that I've seen her, that  
2 she is somewhat sicker but actually may be coming out  
3 of her decline, because it is saying that the events  
4 were that she required Levophed, which is a blood  
5 pressure -- for blood pressure support but down in my  
6 drips, it also says that the Levophed is off, so  
7 therefore she must have just come off the Levophed,  
8 which is -- would be interpreted at least as an  
9 improvement.

10 Q. Can you please read your first line under your  
11 neuro statement.

12 A. "Sedated. Not consistently opening eyes. May  
13 be secondary to edema."

14 Q. And what does that mean?

15 A. Well, it's saying she is sedated but we like  
16 people to be responsive enough that they can, you know,  
17 respond to stimulus. Otherwise they may be  
18 oversedated, okay. She's not opening her eyes  
19 persistently, and I'm questioning whether or not it's  
20 because she cannot mechanically open her eyes because  
21 her eyelids are too swollen.

22 Q. Were you aware that Karen was receiving multiple  
23 eye or ophthalmologic consults at the time?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (includes 611(c))  
-Foundation  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 63:1 - 64:1

1 THE WITNESS: I'm likely to have  
2 known about it. It is not documented in

## Bartlett v Mutual

3 this note.  
 4 Q. (By Mr. Jensen) About six days later on March  
 5 10, please read us your neurological statement there.  
 6 A. "Oversedated. Will decrease Dilaudid and  
 7 decrease Versed. Methadone 20 BID."  
 8 Q. And what does that mean, oversedated?  
 9 A. Means that her sedation is too high.  
 10 Q. How could you tell?  
 11 A. Well, if they're not responding to stimuli you  
 12 would expect them to respond to, like, you know,  
 13 preferably they respond to your voice. Their anxiety  
 14 is sufficiently taken care of that they can still  
 15 respond to you. She may not be, you know -- typically  
 16 I would consider someone oversedated if they're not  
 17 responding to physical stimuli, verbal stimuli and --  
 18 and/or even pain.  
 19 Q. And what did you do by way of physical stimuli  
 20 to determine whether they were sedated properly or not  
 21 back in '05?  
 22 A. I don't know. All I know is that she does react  
 23 to pain. So I did at some point give her some noxious  
 24 stimuli, potentially in a sternal rub or a pinch to see  
 25 if she woke up and would open her eyes or something to  
 00064  
 1 indicate that she felt it

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -Foundation  
 -Improper publishing  
 -Calls for speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 65:6 - 66:4

6 Q. We talked about your bronchoscopy. And then the  
 7 very next day, you see her on March 11. And so that  
 8 would have been after she was at Mass General for about  
 9 a month and five days. Please tell us based upon your  
 10 perception how she's doing that day.  
 11 A. How she's doing?  
 12 Q. Yes, ma'am, please.  
 13 A. Well, she has some bright red blood per rectum.  
 14 So she's bleeding from below.  
 15 Q. Where's that note so I can find it?  
 16 A. This is number 282 and it's at the top. It  
 17 says, "Events," and it says: Some BRBRP -- "Some  
 18 BRBPR," that's bright red blood per rectum. She also  
 19 has some red blood cells in her urine. Her sputum is  
 20 bloody as well. She remains, you know, mildly febrile  
 21 at 101.4. Her blood pressure remains soft. She's  
 22 still on the mechanical ventilator. Her respiration  
 23 rate is still tachypneic but improved.  
 24 She is on vasopressin, which is providing some  
 25 blood pressure support. She's on tube feeds and, of  
 00066  
 1 course, she's still on the mechanical ventilator.  
 2 Q. Tell us what this stands for again under Events,  
 3 the five letters.  
 4 A. B --

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 66:6 - 66:7

6 THE WITNESS: BRBPR, bright red blood  
 7 per rectum.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 66:14 - 66:23

14 Q. (By Mr. Jensen) I'm going to show you the

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15 initial diagram done the day Karen was admitted to Mass  
 16 General and it's entitled "Burn Diagram" and it's dated  
 17 the day she arrived, February 4, and it provides this  
 18 diagram of where Karen had TEN versus rash. Do you  
 19 understand this diagram to tell us, or its reader, that  
 20 Dr. Sabatini believed that Karen's rash was on her  
 21 lower arms and lower legs and posterior and -- first of  
 22 all, is that yes?  
 23 A. Yes.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -Improper publishing  
 -801  
 -802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 66:25 - 67:3

25 Q. (By Mr. Jensen) Did you understand Dr. Sabatini  
 00067  
 1 was also communicating that on Karen's arrival, her  
 2 TENS was on her chest, her upper arms, her back, her  
 3 neck, her face as well as her rectal area?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -801  
 -802  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 67:6 - 67:18

6 THE WITNESS: Well, unfortunately,  
 7 Dr. Sabatini did not use the correct  
 8 diagram. So essentially he's documenting  
 9 for a male. He does seem to imply that it  
 10 is affecting the perineum.  
 11 Q. (By Mr. Jensen) The perineum is what, Doctor?  
 12 A. The area where the -- between the -- that has  
 13 like the vagina, the labia, and the anus.  
 14 Q. And would you have interpreted this, because of  
 15 the cross-marked nature for TEN and the cross-marked  
 16 nature by the vaginal area, that Dr. Sabatini was  
 17 concluding that upon arrival, Karen had TENS involving  
 18 her vaginal area?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -801  
 -802  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 67:20 - 68:5

20 THE WITNESS: Well, once again,  
 21 Dr. Sabatini used the wrong diagram. He  
 22 used the diagram for a male. But, you  
 23 know, assuming that he -- that he's still  
 24 using the same areas, that would be that it  
 25 did affect the area involving at least the  
 00068

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -801  
 -802  
 -Non-responsive

Ruling: Sustained.

1 posterior vaginal or labial area and the  
 2 anus as well, but I cannot see -- that  
 3 little dot right there in the lower diagram  
 4 would be the anus.

5 Q. (By Mr. Jensen) Thank you.

Witness\_ Nam Heui Kim - Vol. 1.txt: 68:8 - 68:10

8 Q. (By Mr. Jensen) Did you become aware that  
 9 Dr. Ryan had documented a vaginal adhesion in her care  
 10 and assessment of Ms. Bartlett?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -801  
 -802  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 68:13 - 68:16

13 THE WITNESS: I don't know who  
 14 documented but I know that the GYN service  
 15 was involved for -- for the adhesions in  
 16 the vaginal area.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))  
 -801  
 -802  
 -Foundation

Ruling: Overruled.

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Witness\_ Nam Heui Kim - Vol. 1.txt: 68:20 - 69:5

What are the mucosal areas that you  
 21 understood in 2005 that TEN attacks or affects?  
 22 A. Well, it can affect any of the mucosal areas,  
 23 the mouth --  
 24 Q. Tell us what those are, please.  
 25 A. The mouth, the respiratory tract, the vagina,  
 00069  
 1 potentially, I guess, your anus too, though that's very  
 2 uncommon. So...  
 3 Q. Is it your understanding in 2005 that TEN  
 4 primarily attacks those mucosal areas you just  
 5 identified as well as the skin?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 69:8 - 70:18

8 THE WITNESS: The mucosal involvement  
 9 is not as well known as the skin.  
 10 Q. (By Mr. Jensen) But you knew then it attacks  
 11 and affects both?  
 12 A. It can, yes.  
 13 Q. And it was your belief that it did affect the  
 14 mucosal areas and attack them of Karen Bartlett?  
 15 A. Well, it definitely attacked the mucosa of her  
 16 perioral area and her respiratory tract, and it is my  
 17 understanding from the other practitioners that it  
 18 affected her vagina as well.  
 19 Q. I'd now like to turn your attention to your --  
 20 is it March 14 entry, Doctor?  
 21 A. Is that 298?  
 22 Q. Yes, ma'am. Is that the date on it? I'm just  
 23 trying to --  
 24 A. Day number 39, yes.  
 25 Q. Okay. And so here we know from your note that  
 00070  
 1 she's still in the actual ICU, one of the five ICU beds  
 2 at Mass General on her 39th day?  
 3 A. Yes.  
 4 Q. And tell us from a lay perspective how she's  
 5 doing on day number 39 in one of the five ICU beds.  
 6 A. Okay. She remains intubated. Her temperature  
 7 still remains with a moderate fever, though it's  
 8 improving. Her blood pressure is adequate. Her heart  
 9 rate is acceptable and improving. Her oxygenation is  
 10 not requiring an extensive amount of support since  
 11 she's only on 35 percent FIO2. She is, as far as I can  
 12 tell, she is not on any blood pressure support.  
 13 She's not following commands, so neurologically  
 14 she is still either delirious or oversedated or -- or  
 15 something because she is not following commands. She's  
 16 not alert enough or oriented enough to protect her  
 17 airway so a trach is being planned for, it looks like,  
 18 March 16 possibly.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -Foundation  
 -Improper publishing

Ruling: Sustained as to lines 69:8 through 69:12. Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 70:20 - 71:9

20 A. She is tolerating tube feeds. She's moving her  
 21 bowels. There's a question of hemorrhoids because of  
 22 the bleeding over the weekend from her rectum. She  
 23 remains on multiple antibiotics and she's had some  
 24 positive blood cultures. I mean, generally, it looks

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -Foundation  
 -Improper publishing

Ruling: Overruled.

## Bartlett v Mutual

25 like she's still very sick but actually has shown some  
00071

1 improvement.

2 Q. Thank you, Doctor. I'm going to ask you a  
3 couple questions about your neuro notes, and you start  
4 by saying, "Well sedated, attempts to further reduce  
5 Versed," which is a sedative, "cause tachypnea"?  
6 A. Tachypnea. So that means that when I or when  
7 attempts to decrease the amount of sedative that she's  
8 getting, which is Versed, that she's -- her breathing  
9 rate goes high.

Witness\_ Nam Heui Kim - Vol. 1.txt: 72:12 - 73:3

12 Q. (By Mr. Jensen) Now, you told us that as of  
13 this day, she's still intubated with the breathing  
14 tube, correct?

15 A. Yes.

16 Q. And you told us that there's a plan for a  
17 possible tracheostomy, correct?

18 A. Yes.

19 Q. Tell us the difference between the two, please.

20 A. Well, an endotracheal tube goes through,  
21 typically, the either the mouth and sometimes the nose  
22 into the trachea and that is essentially the way the  
23 ventilator can essentially breathe for the patient. A  
24 tracheostomy would go through the anterior neck  
25 directly into the trachea.

00073

1 Q. What are the pros and cons medically for Karen  
2 Bartlett in 2005 to potentially getting this  
3 tracheostomy versus not getting it, please?

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 73:6 - 74:25

6 THE WITNESS: Well, the benefits of a  
7 tracheostomy is that it is often more  
8 comfortable for the patient because they  
9 can -- there's nothing in their mouth.  
10 They can have better dental and oral  
11 hygiene. Potentially if they're awake and  
12 alert enough, they may attempt speech or at  
13 least mouthing words. The potential  
14 benefit of a trachea -- of a tracheostomy  
15 is that most people will wean off the  
16 ventilator quicker. It's easier to do  
17 pulmonary toileting, for instance, with  
18 just sucking out secretions blindly, which  
19 the nurses can do.

20 The risks, of course, include that,  
21 you know, the tracheostomy is a surgical  
22 procedure. It can cause bleeding. There  
23 can be loss of airway during the process.  
24 As all surgical procedures, they could  
25 potentially get infected. They could have

00074

1 long-term problems with tracheal malacia.

2 Q. (By Mr. Jensen) What's that, Doctor?

3 A. It's when the cuff of the trach or the  
4 endotracheal tube -- both of them can cause tracheal  
5 malacia -- it causes pressure on the wall of the  
6 trachea, decreasing blood flow to the area and

Objections:

-402

-403

-702 (improper opinion from non-retained expert)

-611 (includes 611(c))

-Foundation

Ruling: Overruled.

## Bartlett v Mutual

7 essentially that area, it just is not -- is not  
 8 healthy. The cartilage does not support the trachea as  
 9 well, and it could potentially, like, collapse when you  
 10 breathe. So when you breathe, you cause negative  
 11 airway pressure in your lungs and then you suck air in.  
 12 Well, that's a problem if your trachea doesn't -- the  
 13 cartilage is not working very well. And when you  
 14 breathe, instead of sucking the air through, it causes  
 15 collapse of the trachea.  
 16 Q. What, if any, are the further risks as you were  
 17 describing for us, or the cons, of getting a  
 18 tracheostomy, please?  
 19 A. Bleeding. I would say bleeding is one of the  
 20 major ones.  
 21 Q. Did this decision between keeping the breathing  
 22 tube in versus getting a potential tracheostomy have  
 23 anything to do with when or whether Karen Bartlett  
 24 could be discharged from the burn unit and go to a  
 25 rehab facility?

Witness\_ Nam Heui Kim - Vol. 1.txt: 75:2 - 76:3

2 THE WITNESS: It is not clear from  
 3 the notes. However, most -- unless you  
 4 want to send someone to a ventilator rehab  
 5 facility, they have to be off the  
 6 ventilator.  
 7 Q. (By Mr. Jensen) Okay.  
 8 A. It is typically easier to wean someone off the  
 9 ventilator when they have a tracheostomy.  
 10 Q. Why is that true?  
 11 A. Well, it's -- one, it's a shorter airway. So  
 12 instead of having to have the air go all the way  
 13 through an endotracheal tube, I mean, think about how  
 14 long that is. Think about trying to suck through a  
 15 straw, breathe through a straw for days and days at a  
 16 time. It makes more energy and more effort to breathe  
 17 through a straw that's long than to breathe through a  
 18 straw that's short. It's also easier for pulmonary  
 19 toileting and it's also more secure.  
 20 I mean, if this tube comes out in a vent  
 21 facility of some kind, there has to be people expert in  
 22 the ability to intubate, to put the tube back in the --  
 23 meanwhile, she may potentially, you know, either die or  
 24 have anoxic or lack of oxygen. So in a vent facility,  
 25 you would have to have a tracheostomy for instance.  
 00076  
 1 Q. If, heaven forbid, you needed a trach, can you  
 2 tell -- show us where, the jury, where on your neck  
 3 that would -- the surgical hole would be, please?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))

Ruling: Sustained as to  
 lines 76:1 through 76:3.  
 Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 76:5 - 76:19

5 THE WITNESS: The -- typically it is  
 6 placed above the sternal notch. This is  
 7 right where your -- your manubrium or this  
 8 little bone right at the top of your chest  
 9 is and then you can feel your thyroid  
 10 cartilage or -- in men it would be the  
 11 Adam's Apple and right below that there's  
 12 another very hard ring that's called a  
 13 cricoid. So between the cricoid and the

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))

Ruling: Sustained.

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14 sternal notch.

15 Q. (By Mr. Jensen) Thank you. Now, would Karen  
16 Bartlett at the time, Doctor, would she have had input  
17 or say in whether she got a trach or not or would it be  
18 the case that she would not have had input because she  
19 couldn't really communicate; she had a breathing tube?

Objections:

-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-611 (includes 611(c))

Ruling: Sustained as to  
line 76:14. Otherwise  
overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 76:21 - 77:9

21 THE WITNESS: It would -- the  
22 decision would have been made by either her  
23 proxy or next of kin.

24 Q. (By Mr. Jensen) And have you just told us that  
25 Karen Bartlett, because a proxy had to speak for her,  
00077

1 would not have had a say in whether that procedure was  
2 done or not?

3 A. Right.

4 Q. Would it be correct to state that Karen was so  
5 ill through this time, March 14, that based upon your  
6 care and treatment, she didn't have any say in whether  
7 or not she got any medical procedures. It was  
8 authorized by her husband or her proxy?

9 A. Yes.

Objections:

-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 77:11 - 78:6

11 Your next note, Doctor, or part of that note says, "Not  
12 alert or oriented enough to protect airway." What does  
13 that mean?

14 A. Well, there's several criteria we often used for  
15 whether or not a patient can be extubated, okay. That  
16 means whether or not we can take the breathing tube  
17 out. One is they have to be able to show that  
18 mechanically, they can breathe on their own, okay. The  
19 other one is that they can -- are neurologically awake  
20 enough so that they don't aspirate because your -- your  
21 mechanisms to protect your lungs from, for instance,  
22 aspiration is very dependent on your neurological  
23 processes. So if -- if those mechanisms are awry  
24 because neurologically you're not there, then we worry  
25 that someone cannot protect their airway, that they  
00078

1 will potentially aspirate their own saliva or  
2 regurgitate instead of being able to, you know, throw  
3 it down the side, they breathe it in.

4 Q. Protecting the airways, is that, in part, that  
5 they're neurologically active enough to be able to  
6 vomit to protect their airway?

Objections:

-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-611 (includes 611(c))  
-Improper Publishing  
-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 78:9 - 79:9

9 THE WITNESS: It's hard to -- it's  
10 hard to explain but you have a lot of  
11 neurological processes that you're not  
12 consciously aware of but that you use to  
13 protect your airway. So you swallow, and  
14 when you swallow, you have it go down the  
15 esophagus and not the trachea. People who  
16 are not neurologically in tact may have  
17 lost that mechanism. So they may swallow  
18 or aspirate. They -- they may vomit and

Objections:

-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-611 (includes 611(c))  
-Foundation

Ruling: Sustained.

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19 instead of having the vomit go out, they  
 20 may actually breathe it in.  
 21 There's -- it's unfortunately not  
 22 simple and it's difficult to explain, but  
 23 we do consider it a risk when someone is  
 24 not neurologically in tact that they are  
 25 unable to protect their airway from either  
 00079

1 aspiration, from vomit, and that they  
 2 just -- they are unable to have the  
 3 appropriate mechanisms.  
 4 Q. (By Mr. Jensen) You touched on this but please  
 5 teach us the relationship between the mechanical  
 6 ventilator, also known as the breathing machine, and  
 7 either the line she's breathing through or the  
 8 potential tracheostomy; is it easier to get off the  
 9 breathing machine if you get trached?

Witness\_ Nam Heui Kim - Vol. 1.txt: 79:11 - 80:3

11 THE WITNESS: Yes.  
 12 Q. (By Mr. Jensen) Why is that true?  
 13 A. Typically it's easier to get -- once again,  
 14 because it's the tracheostomy is a more secure access  
 15 for, one, pulmonary toileting, for suctioning; two,  
 16 it's a shorter airway so it's a shorter straw to  
 17 breathe through versus a long straw to breathe through  
 18 like the endotracheal tube. It's easy to attach and  
 19 unattach, meaning that it's always there. If you  
 20 extubate someone and take them off the breathing  
 21 machine and take the tube out, then if they are  
 22 failing, you would have to reintubate them, which is a  
 23 process that can have complications. In order to see  
 24 if someone can breathe on their own, it's very simple  
 25 with a tracheostomy. You can just take them off the  
 00080  
 1 mechanical ventilator, and when they look like they're  
 2 not doing well, you can simply reattach it.  
 3 Q. Would you have usually in the course of your

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 81:5 - 81:13

let me show you part  
 6 of Exhibit 135, Dr. Sheridan asked for this RICU  
 7 consult and it's seven pages long and it's signed at  
 8 the bottom of the seventh page by Dr. Ken Shepherd.  
 9 And he first says on page one of his consult, he  
 10 crosses out NKDA.  
 11 A. That is no known drug allergies. And then he  
 12 crosses it out because he understands that she does  
 13 have an allergy listed which is sulindac.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Improper Publishing  
 -Calls for speculation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 82:20 - 83:2

20 Q. So based upon this note, her RICU consult, would  
 21 it be your understanding that Dr. Shepherd is likely a  
 22 lung doctor, also known as a pulmonologist?  
 23 A. Well, yes. Most often the respiratory intensive  
 24 care unit is taken care of by pulmonologists.  
 25 Q. And this lung doctor, or pulmonary specialist,  
 00083  
 1 writes, "No history of preexisting lung disease,"

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Improper Publishing  
 -801  
 -802

Ruling: Sustained.

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2 correct?

Witness\_ Nam Heui Kim - Vol. 1.txt: 83:4 - 83:10

4 THE WITNESS: Yes.

5 Q. (By Mr. Jensen) Would you have interpreted that  
6 in your care and treatment of Karen Bartlett to mean  
7 that this lung specialist is communicating to other  
8 healthcare providers like you who read this note that  
9 he believes that Karen Bartlett's lung issues are not a  
10 result of anything she had before she got TEN?

Objections:

-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper Publishing  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 83:14 - 83:17

14 THE WITNESS: Yes. Essentially he's  
15 saying that before this illness, she didn't  
16 have any lung diseases like COPD, asthma,  
17 or other typical diseases.

Objections:

-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper Publishing  
-801  
-802  
-Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 83:19 - 84:10

What's ARDS, acute respiratory

20 distress syndrome, please, Doctor?

21 A. ARDS is a -- it's a syndrome where the lung is  
22 damaged. It's often -- well, essentially, the damage  
23 is in the alveoli or the alveoli wall is typically very  
24 thin like a cell layer thick and allows easy diffusion  
25 of oxygen and carbon dioxide from the air space to the  
00084

1 bloodstream, okay. What happens is in ARDS is this  
2 typically becomes very thickened, fibrous, and it  
3 becomes more difficult for oxygen, typically oxygen --  
4 CO2 usually diffuses easier anyways -- but it makes it  
5 more difficult for gases to exchange across the cell  
6 barrier.

7 Q. And do you recollect that Karen Bartlett was  
8 diagnosed with ARDS, and I guess here as of March 1,  
9 '05, in relation to this bronchoscopy done by a  
10 resident and supervised by Dr. Ryan?

Objections:

-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-Improper Publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 84:12 - 85:1

12 THE WITNESS: Well, the -- she -- it  
13 says the diagnosis but ARDS is, you know,  
14 typically requires a certain criteria  
15 which, you know, you would have to list  
16 whether or not, you know, they had a  
17 certain -- a gradient, whether or not they  
18 had certain pressures, etc., whether they  
19 had findings on chest x-ray. So typically  
20 you would not diagnose this by  
21 bronchoscopy.

22 Q. (By Mr. Jensen) Thank you for that explanation.  
23 That in mind, was it your understanding based upon your  
24 care and treatment of Ms. Bartlett that she didn't have  
25 ARDS, didn't have COPD, and didn't have any need for a  
00085  
1 mechanical ventilatory support before she got TEN?

Objections:

-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained  
expert)  
-Improper Publishing  
-Calls for speculations

Ruling: Sustained as to  
lines 84:12 through 84:22.  
Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 85:2 - 85:10

2 MR. GEOPPINGER: Objection; form.

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3       **THE WITNESS:** Before she got sick,  
 4       she had none of these. I mean...  
 5       **Q.** (By Mr. Jensen) Was it -- was it at this point  
 6       in your care and treatment of Karen Bartlett, Dr. Kim,  
 7       a true statement that based upon everything you knew  
 8       about Karen Bartlett and her condition, that everything  
 9       you were treating was a direct or indirect consequence  
 10      of her toxic epidermal necrolysis, or TEN?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 85:13 - 85:18

13       **THE WITNESS:** Yes.  
 14       **Q.** (By Mr. Jensen) Restated, was it your belief  
 15       and clear understanding that if Karen Bartlett would  
 16       have never had TEN secondary to, most likely, sulindac  
 17       as concluded by you and Dr. Ryan, that she would have  
 18       never needed to be in a burn unit?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 85:22 - 86:25

22       **THE WITNESS:** If she never had TENS,  
 23       she would not have required a burn unit.  
 24       **Q.** (By Mr. Jensen) You --  
 25       **A.** If she didn't have TENS, she would not have  
 00086  
 1       needed a burn unit.  
 2       **Q.** And you say, "Suspicious for possible  
 3       coagulation disorder," correct, Doctor?  
 4       **A.** Which page is that?  
 5       **Q.** On page 298, the bottom of your March 14 note,  
 6       please.  
 7       **A.** Okay. So --  
 8       **Q.** Just for -- is that what it says, Doctor?  
 9       **A.** It says, "Suspicious for possible coagulation  
 10      disorder."  
 11      **Q.** Can coagulation disorders cause something called  
 12      a deep vein thrombosis?  
 13      **A.** Yes.  
 14      **Q.** Did Karen Bartlett get a deep vein thrombosis?  
 15      **A.** I do not remember.  
 16      **Q.** Okay. Does immobility or, as doctors call it,  
 17      stasis often result in deep vein thrombosis?  
 18      **A.** It is a risk factor.  
 19      **Q.** Representing to you there's documentation that  
 20      Karen Bartlett had a DVT and was, therefore, treated  
 21      with blood thinners or what doctors call anticoagulants  
 22      in the Mass medical chart, do you believe based upon  
 23      your care and treatment of Ms. Bartlett that that DVT  
 24      also would have been an indirect consequence of her  
 25      TEN?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Improper Publishing  
 -Calls for speculations  
 -Foundation

Ruling: Sustained as to lines 86:16 through 86:25. Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 87, Line 3

3       **THE WITNESS:** Most likely.

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 89:21 - 89:23

21       **Q.** Disseminated intravascular coagulopathy is a  
 22       condition that, if it progresses, can quickly lead to  
 23       death, correct?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 90:1 - 90:20

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1 THE WITNESS: Yes. But according to  
 2 this note --  
 3 Q. (By Mr. Jensen) Let me ask a new question. Was  
 4 DIC ever a concern of yours in the treatment of Karen  
 5 Bartlett?  
 6 A. She's hospitalization number 41 on that note on  
 7 the -- on the 16th, and on the 14th I'm concerned that  
 8 she has some sort of coagulation disorder, though I do  
 9 not mention DIC. So someone on the 15th must have  
 10 started a DIC workup. So someone apparently was  
 11 suspicious for DIC because on the 16th I have the  
 12 results and say that it's not consistent with DIC.  
 13 Q. Is DIC strongly associated with multiorgan  
 14 failure and --  
 15 A. It can be, yes.  
 16 Q. Is DIC and multiorgan failure strongly  
 17 associated with end-stage of death process?  
 18 A. Yes, it can be.  
 19 Q. Hence, someone did a DIC workup to hopefully  
 20 avoid that from happening?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Improper publishing  
 -Calls for speculation

Ruling: Sustained.  
 Speculation (Rule 602).

Witness\_ Nam Heui Kim - Vol. 1.txt: 90:23 - 91:19

23 THE WITNESS: Well, sometimes when  
 24 someone is bleeding or has a DVT or doing  
 25 both at the same time, there's concern that  
 00091  
 1 she is not coagulating appropriately. The  
 2 whole thing about DIC is that you may be  
 3 coagulating in the wrong places and not  
 4 coagulating in the wrong places.  
 5 Q. (By Mr. Jensen) Let's just quickly catalog, if  
 6 we might, Doctor, I have you seeing Karen Bartlett four  
 7 times over the 10th; the 11th is the fifth; 14th is the  
 8 sixth; 16th is the seventh -- 17th -- 18th would be the  
 9 ninth; the 21st would be the tenth; 23rd would be the  
 10 12th; 24th, thirteenth; 25, fourteenth; 28th is the  
 11 fifteenth; 30th is the sixteenth; 31st, seventeenth;  
 12 April 1st, the eighteenth; April 3 the nineteenth;  
 13 April 4 the twentieth; April 10 the twenty-first; April  
 14 11 the twenty-second; April 12 the twenty-third; and  
 15 April 24 the twenty-fourth time.  
 16 With that approximate catalog in mind, does it  
 17 appear to you that you actually saw Karen Bartlett  
 18 approximately 24 times in a critical care setting at  
 19 Mass General?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Improper publishing  
 -Calls for speculation

Ruling: Sustained as to  
 lines 90:23 through 91:15.  
 Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 91:22 - 91:25

22 THE WITNESS: Yes.  
 23 Q. (By Mr. Jensen) And would you approximate that  
 24 on each of these occasions, you spent over 35 minutes  
 25 or so with Karen?

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Improper Publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 92:3 - 92:5

3 THE WITNESS: Yes. I mean, it's  
 4 roughly 30-some minutes is very, very  
 5 typical from most of these notes.

Objections:  
 -611 (includes 611(c))  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for speculation  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 93:20 - 93:21

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Is that your signature on the bottom  
21 of 412, Doctor? The date is March 28, '05.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 94, Line 6

6 A. Yes. The bottom of the page is mine.

Witness\_ Nam Heui Kim - Vol. 1.txt: 94:16 - 94:21

And had you read it before you  
17 started writing on the same page, you would have seen  
18 that Dr. Ojikutu here said, Impression Recommendations,  
19 "45-year-old female with TEN secondary to NSAIDs,  
20 clinically improving," correct?  
21 A. Yes.

Objections:  
-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 96:5 - 96:14

5 Q. (By Mr. Jensen) I'd like now to direct your  
6 attention, please, Doctor, to your March 18 entry.  
7 Tell me when you're there, please.  
8 A. Okay. All right.  
9 Q. And there you say, "The trach," that we've been  
10 discussing, "is cancelled due to patient's family  
11 reluctance to proceed with feelings of doom and  
12 forboding associated with the prospect of the procedure  
13 delayed to Monday, the 21st," correct?  
14 A. Yes.

Objections:  
-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 96:18 - 97:1

18 Q. Let me show you Dr. Sheridan's note of a similar  
19 date or -- strike that. Let me first show you the  
20 pulmonologist's note of -- let's get a date here --  
21 same day, 3 -- March 18. And he says, "I feel she is  
22 not ready for extubation now and likely for some time  
23 to come." Would you have understood that to be talking  
24 about the same topic whether or not she should get  
25 trached?  
00097  
1 A. Yes.

Objections:  
-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-Calls for speculation  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 97:24 - 98:8

24 Q. (By Mr. Jensen) Dr. Kim, the same day you made  
25 this note on March 18, '05, about the trach being  
00098  
1 cancelled, Dr. Sheridan made this typed up note and he  
2 said, "She has been considered for tracheostomy over  
3 the past few weeks. This has been delayed because of  
4 extensive bleeding she has had from visceral locations,  
5 including her airway, in fear of operating in that  
6 environment."  
7 What are the visceral locations he'd be  
8 referring to, please?

Objections:  
-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-Calls for speculation  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 98:10 - 98:18

10 THE WITNESS: Well, he's not precise  
11 about it, but from her history I would  
12 suspect that the perioral area, the airway,

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13 you know, and -- well, actually, including  
14 her airway, he says, and from her GI tract.  
15 Q. (By Mr. Jensen) Dr. Sheridan also on March 18,  
16 '05 says here at the bottom that "Certainly prognosis  
17 for her survival remains guarded and the family is  
18 aware." Do you see that?

Objections:  
-611 (includes 611(c))  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 98:21 - 99:2

21 A. Yes.  
22 Q. Okay. Based upon you treating and evaluating  
23 and caring for Karen the same day, would you concur  
24 with what Dr. Sheridan reported that day that her  
25 survival remained or -- her prognosis for survival  
00099  
1 remained guarded at that time?  
2 A. Yeah. She's still critically ill.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Sustained as to  
"with what Dr. Sheridan  
reported that day."  
Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 99:19 - 99:24

19 Q. Did Karen have a feeding tube? Is that how she  
20 was being fed --  
21 A. Yes. It says, "tube feeds." She's on tube  
22 feeds.  
23 Q. When you see a TF, that's tube feeds?  
24 A. Typically it's tube feeds.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 100:13 - 100:20

13 Q. And when's the last time you've seen her on a  
14 tube feed according to your review of the records,  
15 please?  
16 A. From my review of the records you gave me of  
17 notes I wrote, the last time is on April 12.  
18 Q. So that would have been approximately two months  
19 and eight days after she got to the hospital on  
20 February 4, correct?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 100:22 - 101:4

22 THE WITNESS: I'd have to do the  
23 math.  
24 Q. (By Mr. Jensen) That's why I said,  
25 "approximately."  
00101  
1 A. Yeah, approximately.  
2 Q. Okay. On March 21 you make a note that says,  
3 "Status post tracheostomy today." Does that mean she  
4 got it that day?

Objections:  
-402  
-403  
-Improper publishing  
-611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 101:7 - 101:8

7 A. Yes, that would mean that she had it done that  
8 day.

Objections:  
-402  
-403  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 102:11 - 102:15

11 Q. (By Mr. Jensen) And in lay terms to Karen  
12 Bartlett on this date, what did it mean that she was  
13 still in respiratory failure?  
14 A. That means she still required a mechanical  
15 ventilator.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)

Ruling: Overruled.

## Bartlett v Mutual

Witness\_ Nam Heui Kim - Vol. 1.txt: 103:16 - 104:3

16 Q. And here you enter "Prophylactic Nexium,  
17 Fragmin." Does prophylactic mean precautionary?  
18 A. It's to prevent -- to prevent something.  
19 Q. And because they're blood thinners or Fragmin  
20 is --  
21 A. Fragmin is a blood thinner.  
22 Q. -- would that have meant you're trying to  
23 prevent a coagulation problem like a --  
24 A. Like a DVT, yes.  
25 Q. Okay. And you document in the next day after  
00104  
1 her trach, March 22, that she remains in the ICU,  
2 correct?  
3 A. Yes.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 104:25 - 105:13

25 Q. Were you actually interpreting Karen's chest  
00105  
1 x-rays?  
2 A. Yes.  
3 Q. And the next day on March 23, you said, "The  
4 chest x-ray showed pleural effusions worsening."  
5 First, tell us what a pleural effusion is when a doctor  
6 like you saw it on her x-ray?  
7 A. On which day, sorry?  
8 Q. March 23.  
9 A. March 23.  
10 Q. So, first, please tell us what a pleural  
11 effusion is.  
12 A. A pleural effusion is fluid between the lung and  
13 the chest wall.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 106:14 - 106:18

On March 24, the  
15 next day, you spend another 39 minutes, it looks like,  
16 in critical care and treatment of Karen, and there you  
17 state, in part, that she's sedated and not adequately  
18 waking up yet?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 106:21 - 107:15

21 A. Yes.  
22 Q. And you say, "Weaning the sedative Versed is  
23 tolerated. Methadone, Ativan, and Haldol to be  
24 continued." We haven't spoke about Haldol yet. What  
25 is that, please?  
00107  
1 A. Haldol is a -- trying to remember the name of  
2 the class -- but it's an antipsychotic.  
3 Q. Ativan is a what, please?  
4 A. Benzodiazepine.  
5 Q. Is it used for antiseizure?  
6 A. Ativan can be used in seizures but --  
7 Q. Oh -- Sorry.  
8 A. Go ahead.  
9 Q. Is it also used for pain control?  
10 A. No. It's used for -- it's an anxiolytic, like

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

## Bartlett v Mutual

11 Versed. It's in the same family.  
 12 Q. Why was she being given an antipsychotic drug  
 13 Haldol?  
 14 A. Because often it will decrease their need for  
 15 anxiolytics.

Witness\_ Nam Heui Kim - Vol. 1.txt: 109:7 - 109:24

7 Q. (By Mr. Jensen) On March 25, the next day, you  
 8 document hospital day 50, it looks like, and you say,  
 9 "Chest tube placed yesterday with excellent result.  
 10 New central line today." And that was entered why?  
 11 A. Well, I usually go over the events and that's  
 12 why I place events of pertinence there. The chest tube  
 13 was placed because of the pleural effusions. If it's  
 14 gets large enough, then we worry that it can impact the  
 15 mechanical -- the mechanical -- the ability for the  
 16 lung to ventilate.  
 17 Q. Okay.  
 18 A. It just takes up space.  
 19 Q. Based on your entries here that she was awake  
 20 and under Neuro, you say, "A little more agitated but  
 21 more awake," would it have been, from your review of  
 22 your notes, would Karen have, at that point, been able  
 23 to communicate with her doctors and participate in her  
 24 care decisions or not?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Improper publishing  
 -Calls for speculation  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 110:1 - 110:14

1 THE WITNESS: To a low level because  
 2 I also state in her exam that she is awake  
 3 and she's nodding to questions. So she's  
 4 at least able to answer simple questions,  
 5 like: Are you in pain, are you not in  
 6 pain, are you hungry, not hungry, things  
 7 like that.  
 8 Q. (By Mr. Jensen) Hence, would it, therefore,  
 9 based upon what you just told us still have been your  
 10 impression based upon your review of your notes that at  
 11 that point Karen was not able to participate actively  
 12 in her care yet, but she would still need her husband  
 13 or her sister or whoever her proxy was to make  
 14 decisions for her?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Calls for speculation  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 110:17 - 111:1

17 THE WITNESS: At this point it's most  
 18 likely that all major medical decisions  
 19 were made by her proxy.  
 20 Q. (By Mr. Jensen) On the same day, second page,  
 21 you say, under Wounds, can you read us your note there,  
 22 please.  
 23 A. Okay. Yes.  
 24 Q. Can you read it, please.  
 25 A. Oh, "Granulating back wound, some  
 00111  
 1 epithelialization but still very raw and oozy."

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Foundation  
 -Improper publishing  
 -611 (includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 111:8 - 111:11

Let's go, then, to March 28. And you  
 9 write, "Waking up nicely as we decrease medications,"

Objections:  
 -Improper publishing

Ruling: Overruled.

Bartlett v Mutual

10 correct?

11 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 112:7 - 113:15

Were you involved in making  
8 decisions as to what would be used on different  
9 portions of Karen's body for her skin care? Dr. Ryan,  
10 I'll represent to you testified that to the effect that  
11 different things can be used on different locations of  
12 her body. Pig skin might be used on her chest, for  
13 example, and Acticoat might be used on other portions.  
14 Were you involved in those decisions?

15 A. Yes.

16 Q. Tell us what the most severe areas would get.

17 A. It depends really on the location, I mean, and  
18 what -- what state they were in. So -- and for  
19 instance, the back and Acticoat, for instance, on the  
20 back would be very easy. We have huge, very large  
21 Acticoat sheets that could just be placed on the bed  
22 and she could lie on the Acticoat. I mean, none of  
23 these -- none of these wounds required excision and  
24 grafting, so our primary goal of care was, one, to take  
25 care of -- to prevent infection, to provide support, to  
00113

1 hopefully prevent a lot of losses of fluid from open  
2 raw areas. So...

3 Q. On March 30 you document, in part, that the  
4 wounds back slowly closing, correct?

5 A. Mm-hmm.

6 Q. What -- was the back a primary area of bleeding  
7 for Karen and skin care?

8 A. Well, multiple -- many of these notes say that  
9 her back was oozy. So her back was fairly -- sounds  
10 like it was fairly raw and was a source of some, you  
11 know, oozy bleeding.

12 Q. For a layperson who might not understand, why  
13 can a person be at Mass General for 55 days and still  
14 have their back be bleeding? Tell us how it's possible  
15 that that can still be true.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Foundation  
-Improper publishing  
-Calls for speculation

Ruling: Sustained as to  
lines 112:10 through  
112:13. Otherwise  
overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 113:17 - 114:16

17 THE WITNESS: Well, it has to  
18 epithelialize. That means that your own  
19 body has to create the epidermis to go over  
20 the back. And one, you lie on your back  
21 all the time and she had wounds all over.  
22 So it's like you can't -- it's very  
23 difficult to have someone on their stomachs  
24 when they're intubated. So she's on her  
25 back a lot.

00114

1 Q. (By Mr. Jensen) Is a lay definition of  
2 reepithelialize the body's creation of new skin where  
3 skin has fallen off?

4 A. It is -- you know how you have a layer of skin  
5 over your -- well, the skin is actually very complex,  
6 and the dermis is the living layer of skin and the  
7 epidermis is the top layer of it. Essentially in TENS  
8 you don't lose the entire dermis. So you're not  
9 technically completely making new skin but you have to

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (includes 611(c))

Ruling: Overruled.

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10 have a protective layer on top of the skin. So that's  
 11 what she needed.  
 12 Q. With the teaching you just provided us, and  
 13 thank you for it, Doctor, is a correct lay definition  
 14 of reepithelialize your body's creation of the top  
 15 layer of your dermis that has fallen off?  
 16 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 114:18 - 116:8

18 Q. (By Mr. Jensen) On hospital day 56, March 31,  
 19 you say, "Versed off." Does that mean she's completely  
 20 off that --  
 21 A. She is completely off the Versed. However, she  
 22 is now on Ativan. She's getting it three milligrams  
 23 four times a day, if that -- is that the little 4 --  
 24 that little 4 on top, okay.  
 25 Q. Still getting Methadone and now getting Haldol  
 00115  
 1 six times a day?  
 2 A. Six times a day.  
 3 Q. And you document the next day, her wounds back  
 4 slowly healing, still has TEN, correct?  
 5 A. Mm-hmm.  
 6 Q. And on April 1 you say, "Exam: Sedated but  
 7 awakens." Have you further decreased her sedatives or  
 8 painkillers at this time?  
 9 A. No. It sounds like I probably did not make any  
 10 changes from the previous day on her Ativan, Methadone,  
 11 and Haldol.  
 12 Q. And you note in the second page that she still  
 13 has some open spots scattered throughout but her wounds  
 14 are better, correct?  
 15 A. Yes. And it does seem like we were treating her  
 16 with Acticoat and Mepitel. So we --it was Acticoat.  
 17 Q. And what's -- thank you for that. And what's  
 18 Mepitel?  
 19 A. It's just a -- it's like a flexible plastic  
 20 sheet that goes between the Acticoat just to prevent  
 21 sticking. So it itself doesn't have any therapeutic  
 22 properties. It just helps the Acticoat from sticking  
 23 against her.  
 24 Q. And what's Acticoat?  
 25 A. Acticoat is the silver dressing. It has silver  
 00116  
 1 as the active agent.  
 2 Q. What's aqua gel?  
 3 A. Aquacel.  
 4 Q. Aquacel.  
 5 A. It's a cellulose type of agent. It can be  
 6 absorbent but that was not used on her back.  
 7 Q. Was Aquacel used on Karen Bartlett for her --  
 8 A. I don't recall if Aquacel was used on her.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -Improper publishing  
 -Calls for speculation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 116:14 - 116:20

14 Q. (By Mr. Jensen) Here's Dr. Ryan's note of  
 15 February 28 and she says, "Wounds: Xenograft to back  
 16 and silver nitrate. Sloughs reepithelializing. Mouth  
 17 still very bloody. She has vaginal adhesion." Does  
 18 that refresh your recollection that Karen had pig skin  
 19 as one of the treatments that you and your colleagues

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -611 (includes 611(c))  
 -Improper publishing  
 -801  
 -802

Ruling: Overruled.

Bartlett v Mutual

20 were using?

Witness\_ Nam Heui Kim - Vol. 1.txt: 116:22 - 118:3

22 THE WITNESS: Well, yeah, clearly.  
 23 She documents that xenograft was used.  
 24 Q. (By Mr. Jensen) And tell us -- we've heard it's  
 25 pig skin but beyond it being called a xenograft and we  
 00117  
 1 know it's pig skin, tell us what it is and how it's  
 2 applied to help the wound heal.  
 3 A. Well, it prevents -- it's used essentially as a  
 4 barrier, okay. It's a biological dressing and it helps  
 5 prevent fluid loss but -- and often if someone does  
 6 need grafting -- in her, I don't think she ever needed  
 7 grafting -- but if they do need grafting, if the  
 8 xenograft takes, it's a good indication that your skin  
 9 graft, when you harvest from the patient herself or  
 10 himself, will -- is likely to take as well. So you  
 11 don't waste an excision and grafting episode in -- on  
 12 an area that is not ready for a graft.  
 13 Q. I'm going to skip to April 4, Doctor, and on  
 14 that day on the second page, do you state that Karen  
 15 still has too many pulmonary secretions to try PM value  
 16 [sic] on trach?  
 17 A. Yes.  
 18 Q. What does that mean?  
 19 A. Essentially it still has too many pulmonary  
 20 secretions to try a Passy-Muir valve on the trach.  
 21 Q. What is that?  
 22 A. The Passy-Muir valve actually plugs up the trach  
 23 enough so that she can have air going past her vocal  
 24 cords so she can talk.  
 25 Q. Does that mean she was able to talk at that  
 00118  
 1 time?  
 2 A. Well, no because we couldn't use a Passy-Muir  
 3 valve because I felt her secretions were too much.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 118:11 - 118:18

11 Q. On April 10, which I guess is about two months  
 12 and a week into her hospitalization, you document,  
 13 "Patient pulled out IntroFlex. It was replaced  
 14 yesterday." What is that that was pulled out?  
 15 A. IntroFlex is a feeding tube.  
 16 Q. And is it -- is it not uncommon as of 2005, in  
 17 your experience, Doctor, that patients both, A, want to  
 18 pull out their feeding tube; and B, pull them out?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing  
 -611 (includes 611(c))

Ruling: Sustained as to  
 lines 118:16 through  
 118:18. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 118:21 - 118:25

21 THE WITNESS: Unfortunately, it's not  
 22 uncommon.  
 23 Q. (By Mr. Jensen) Why is it not uncommon based  
 24 upon your care and treatment of Karen Bartlett that  
 25 this occurs?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -611 (includes 611(c))

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 119:3 - 119:24

3 THE WITNESS: Because people don't  
 4 like foreign bodies in their nose going

## Bartlett v Mutual

5 down into their stomachs, and when they're  
 6 uncomfortable and they're not thinking,  
 7 they pull it out.  
 8 Q. (By Mr. Jensen) On the next day, April 11, I  
 9 guess is the day before her discharge, you write,  
 10 "Stable. Fiberoptic endoscopic evaluation swallow FEES  
 11 tomorrow." Tell us what that's about, please.  
 12 A. Essentially, we want to know that if she can  
 13 safely swallow. So if she can safely swallow, then she  
 14 can be fed.  
 15 Q. And you -- did you do that test to determine  
 16 whether she could safely swallow?  
 17 A. No. It's done by another service.  
 18 Q. And what does FEES stand for?  
 19 A. Fiberoptic endoscopic evaluation of swallow.  
 20 Q. And then the next day on 4/12, which I think is  
 21 the date of Karen's first of two discharges from Mass  
 22 General, you say, "If okay, will decannulate the  
 23 tracheostomy." What does that mean, Doctor?  
 24 A. It means take the tracheostomy out.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 120:6 - 120:13

6 Q. And I'll show you and refresh your recollection  
 7 in a moment that at least for some of those twelve  
 8 days, she was at Northeast Rehab Hospital. I'll show  
 9 you the discharge summary from her second  
 10 hospitalization where she got back to Mass General on  
 11 4/18 and left for a second time on 4/27. And  
 12 Dr. Schultz documents that she was --  
 13 A. So she failed her FEES.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 120:14 - 120:19

I'll show you what  
 15 happened for some of the time period that you just  
 16 referred to when she was out at a different hospital,  
 17 then came back to Mass General. And you see Karen  
 18 while she came back for her second hospitalization on  
 19 April 24?

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing  
 -801  
 -802

Ruling: Sustained as to  
 lines 120:14 through  
 120:17, up to "Mass  
 General." Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 120, Line 24

24 A. I wrote a note so I must have seen her.

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained expert)  
 -Improper publishing

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 121:15 - 122:5

please, to tell us  
 16 what your understanding would have been when you were  
 17 treating her in her second hospitalization as to why  
 18 she needed that treatment, please.  
 19 A. So she was readmitted for respiratory issues.  
 20 Apparently she was very secretional. It appeared she  
 21 grew out multiple organisms during her stay, including  
 22 respiratory and urinary organisms. So she both had,  
 23 looks like, some sort of either pneumonia or  
 24 tracheobronchitis with copious secretions as well as a  
 25 urinary tract infection. She was also deemed to be  
 00122

Objections:  
 -402  
 -403  
 -702 (improper opinion from non-retained  
 expert)  
 -Improper publishing  
 -801  
 -802

Ruling: Overruled.

1 dehydrated with a free water deficit of four liters.  
 2 Q. So in summary, very briefly, the first  
 3 hospitalization, you were involved from day 8 all the

**Bartlett v Mutual**

4 way to day -- the last day of her service, which was  
5 April 12, 2005, correct, Doctor?

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 122, Line 8

8 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 124:7 - 124:12

7 Q. Based upon this review we've done and your  
8 review of other portions of the record, was it your  
9 belief and impression for all of Karen's treatment at  
10 Mass General in 2005 that it was all needed as a direct  
11 or indirect result of her TEN which was concluded to be  
12 a likely consequence of her ingestion of sulindac?

Witness\_ Nam Heui Kim - Vol. 1.txt: 124:15 - 124:25

15 THE WITNESS: It -- her  
16 hospitalization and whatever she needed was  
17 a consequence of her TENS, and her TENS was  
18 thought to be due to sulindac.  
19 Q. (By Mr. Jensen) Have you seen patients this  
20 week, Doctor?  
21 A. Yes.  
22 Q. Are you to see patients tomorrow?  
23 A. Yes.  
24 Q. Did you see patients last night?  
25 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 125:19 - 125:22

have you ever  
20 heard as of 2005 that anyone ever got TENS from  
21 anything they ate in Chinatown or, for that matter,  
22 anywhere in Boston?

Witness\_ Nam Heui Kim - Vol. 1.txt: 125:24 - 126:1

24 THE WITNESS: No.  
25 Q. (By Mr. Jensen) No, you have not heard that?  
00126  
1 A. I have not heard that.

Witness\_ Nam Heui Kim - Vol. 1.txt: 126:16 - 126:25

16 Q. (By Mr. Jensen) I asked Dr. Ryan, I'll  
17 represent to you yesterday, whether she likes Chinese  
18 food. She told me yes. And I asked her then whether  
19 she's cut down her Chinese food consumption having  
20 anything to do as a result of Karen Bartlett's care and  
21 treatment, and she told me no. Asking you to assume  
22 those facts are true, have you in any way cut down on  
23 where you eat or what Chinese food you might eat as a  
24 result of your care and treatment of Karen Bartlett?  
25 A. No.

Witness\_ Nam Heui Kim - Vol. 1.txt: 127:2 - 127:6

2 THE WITNESS: No.  
3 Q. (By Mr. Jensen) And have you occasioned the  
4 Chinatown area to eat not too far from Mass General in

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing

Ruling: Overruled.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Foundation  
-801  
-802  
-611 (Includes 611(c))

Ruling: Overruled.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Foundation  
-801  
-802  
-611 (Includes 611(c))

Ruling: Sustained as to lines 124:19 through 124:25. Otherwise overruled.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802  
-611 (Includes 611(c))

Ruling: Sustained.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802  
-611 (Includes 611(c))

Ruling: Sustained.

Objections:

-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802  
-611 (Includes 611(c))

Ruling: Sustained.

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Objections:  
-402  
-611 (Includes 611(c))

Ruling: Sustained.

5 Boston?  
6 A. Yes.

Witness\_ Nam Heui Kim - Vol. 1.txt: 127:9 - 127:19

9 Q. I'm going to show you an exhibit, Dr. Kim, that  
10 Dr. Ryan physically wrote on, and those are her  
11 initials CMR on Exhibit 157. And it's a blow-up of a  
12 table from a publication of Dr. Ryan's, and she agreed  
13 that when I added, systemic features and complications,  
14 I added, "of TEN," that that was an accurate statement  
15 of what those things are on the chart.  
16 In your review of that one page, do you agree  
17 that, to your knowledge in 2005, those are some of the  
18 systemic features and complications that occur with  
19 TEN?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-801  
-802  
-611 (Includes 611(c))  
-Foundation  
-Improper publishing  
-Best Evidence

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 127:22 - 128:8

22 THE WITNESS: Yes, these are some of  
23 the systemic features and potential  
24 complications of TENS.  
25 Q. (By Mr. Jensen) Like you, of course, Dr. Kim,  
00128  
1 Dr. Ryan didn't see Karen every day because either you  
2 were or Dr. Schultz or Sheridan. What she did is she  
3 initialed for me things that she knew of that Karen  
4 Bartlett had in relation to her TEN. I'd like you to  
5 please review it and tell us whether or not you can add  
6 any additional complications or features that  
7 Ms. Bartlett had as a result of her TEN that you know  
8 of, please.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-611 (Includes 611(c))  
-Foundation  
-Improper publishing  
-Best Evidence

Ruling: Sustained as to  
lines 127:22 through  
127:24, and as to Dr.  
Ryan's conclusions.  
Otherwise overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 128:11 - 128:20

11 THE WITNESS: So what she initialed  
12 is essentially correct.  
13 Q. (By Mr. Jensen) Okay. And do you know of any  
14 additional complications, direct or indirect, of  
15 Karen's TEN that you know of that Dr. Ryan did not  
16 initial?  
17 A. The vulvovaginal synechia, which I did not  
18 observe myself. It's -- Dr. Ryan diagnosed that.  
19 Q. And would you put your initials by that, please,  
20 on 157.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-Improper publishing  
-611 (Includes 611(c))  
-Foundation  
-Improper publishing  
-Best Evidence  
-801  
-802

Ruling: Sustained as to  
lines 128:13 through  
128:20. Rule 602 --  
witness admits having no  
personal knowledge.

Witness\_ Nam Heui Kim - Vol. 1.txt: 128:24 - 128:25

24 Q. And you put NK by that for the record?  
25 A. Yeah.

Witness\_ Nam Heui Kim - Vol. 1.txt: 129:1 - 129:11

And then I'll show it to you on the  
2 screen. It's easy to see. I went through this list  
3 with Dr. Ryan also, it's a publication of Dr. Ryan's,  
4 and it says, "General Treatment Strategy for" -- I'll  
5 hand you Exhibit 158 that Dr. Ryan also put her  
6 initials on and she agreed that that was a list of the  
7 general treatment strategies for burn patients  
8 including patients with TEN, and ask you if you agree  
9 that Karen got each one of these.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
  
-611 (Includes 611(c))

Ruling: Sustained as to  
Dr. Ryan's conclusions.  
Otherwise overruled.

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10 Did Karen get an early referral to a specialist  
11 in a burn unit?

Witness\_ Nam Heui Kim - Vol. 1.txt: 129:13 - 129:15

13 THE WITNESS: Yes.  
14 Q. (By Mr. Jensen) Did Karen have prompt  
15 withdrawal of the causative agent?

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (Includes 611(c))

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 129:19 - 129:23

19 THE WITNESS: Well, it wasn't  
20 withdrawn. It just wasn't given.  
21 Q. (By Mr. Jensen) The causative agent sulindac  
22 had been ceased before she got to Mass General?  
23 A. Right.

Objections:  
-402  
-403  
-702 (improper opinion from non-retained expert)  
-611 (Includes 611(c))  
-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 130, Line 16

16 A. Yes

Objections:  
-Non-responsive  
-611 (Includes 611(c))  
-Foundation

Ruling: Overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 131:7 - 131:14

7 Q. Good afternoon, Dr. Bartlett [sic]. My name is  
8 Jeffrey Geoppinger. I represent the defendant in this  
9 case and I just have a few quick follow-up questions  
10 and then we'll hopefully have you on your way, all  
11 right.  
12 Doctor, you and I have never met before,  
13 correct?  
14 A. Right.

Witness\_ Nam Heui Kim - Vol. 1.txt: 131:20 - 132:22

20 Q. Is this the discharge summary that you completed  
21 at the time of Karen Bartlett's discharge from  
22 Massachusetts General on 4/14/2005?  
23 A. I signed it.  
24 Q. Did you dictate the information that's included  
25 in here?  
00132

1 A. No.

2 Q. Who did?

3 A. That would be our nurse practitioner, Sally  
4 Morton.

5 Q. All right. How did that work, did you -- how  
6 did you convey the information to the nurse  
7 practitioner such that she could get it into this  
8 record?

9 A. What she does is she reviews the record, does a  
10 dictation. And then I review her dictation and sign  
11 it.

12 Q. So Ms. --

13 A. I don't tell her what to dictate. She just goes  
14 through the record.

15 Q. So the information contained in, for instance,  
16 this first section, history of present illness, was  
17 obtained from Karen Bartlett's medical records by Nurse  
18 Practitioner Sally Morton, correct?

19 A. Yes.

20 Q. That was not information that you yourself  
21 placed into the history of present illness, correct?

Bartlett v Mutual

22 A. No.

Witness\_ Nam Heui Kim - Vol. 1.txt: 135:1 - 137:24

1 Q. We've gone through those in quite some detail  
2 today, and correct me if I'm wrong, but is it a fair  
3 statement to say that nowhere in this exhibit did you  
4 make any notation regarding NSAIDs being a triggering  
5 or a hypothetical cause of Ms. Bartlett's TENS?

6 A. I don't think I have put it there, you know,  
7 without reviewing everything, but it wouldn't -- it  
8 wouldn't be something that I would note because it's  
9 not an event and it's not a new allergy. It's not  
10 anything new that's happened since her admission. So  
11 it's very likely I may not have mentioned anything.

12 Q. Okay. As we sit here today, you can't point me  
13 to anything that I missed --

14 A. No.

15 Q. -- because I believe I've read it.

16 A. I can't --

17 Q. Obviously it's your handwriting and --

18 A. I can't pinpoint anything at this, you know,  
19 maybe if I took a microscope, maybe I could find  
20 something. But from my review, I would say that no.

21 Q. Thank you. Doctor, is it a fair statement to  
22 say that your primary concern with respect to  
23 Ms. Bartlett is providing treatment for her TENS,  
24 correct?

25 A. Yes.

00136

1 Q. Your primary concern during her hospitalization  
2 and during the course and scope of your treatment is  
3 not to determine the etiology of her TENS, correct?

4 A. It is not to determine the etiology. It is --  
5 except for the fact that we have to stop exposure to  
6 it. But no. If we believe we've stopped exposure to  
7 it, it's not something that I would spend a lot of time  
8 investigating.

9 Q. Is it a fair statement to say that in the  
10 interest of stopping exposure to potential reasons for  
11 TENS, you're overly cautious in that respect?

12 A. You mean like prescribing the other drugs in the  
13 same classification or with similar chemical  
14 structures?

15 Q. What I mean is that in the interest of making  
16 sure that you don't expose the patient to any potential  
17 or hypothetical or possible reason why they had  
18 initially contracted the TENS, that you're going to be  
19 -- would it be fair to say that you're overly cautious  
20 in that regard?

21 A. Well, we don't like to be overly but we like to  
22 be reasonably cautious --

23 Q. All right. Fair.

24 A. -- okay, because you can rule out all sorts of  
25 drug classes if you say that everything potentially

00137

1 could be causing it. So we would like to be reasonably  
2 cautious and make sure that the most likely culprits  
3 are at least she's not exposed to again.

4 Q. Right. And when you say, "the most likely  
5 culprits," is it a fair statement that your  
6 determination, if you made one, that the most likely

Bartlett v Mutual

7 culprit in this case would be the use of an NSAID was  
 8 based upon her history and physical, correct?  
 9 A. It would be based on her history. Her physical  
 10 would give you no clue.  
 11 Q. Okay. And her history was what?  
 12 A. Her history was that she came in from New  
 13 England Medical Center with biopsy-proven TENS after  
 14 exposure to sulindac and eating Chinese food.  
 15 Q. And when -- another way of saying exposure to  
 16 sulindac is that she had taken sulindac in temporal  
 17 proximity to the diagnosis of TEN, correct?  
 18 A. Yes.  
 19 Q. Other than that temporal proximity, did you do  
 20 any type of experiment or any other type of process by  
 21 which to attempt to determine that --  
 22 A. No.  
 23 Q. -- sulindac had something to do with the TEN?  
 24 A. No.

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Witness\_ Nam Heui Kim - Vol. 1.txt: 145:5 - 145:9

Is there an identifiable class of people who  
 6 develop TENS?  
 7 A. Yes. Someone who may have had it before.  
 8 Q. Okay. Beyond that?  
 9 A. Beyond that, no.

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Witness\_ Nam Heui Kim - Vol. 1.txt: 148:2 - 148:13

2 Q. Were you compensated for your time spent  
 3 reviewing the medical records prior to coming to your  
 4 deposition today?  
 5 A. No.  
 6 Q. Do you intend to be?  
 7 A. I hope so.  
 8 Q. Are you going to bill for it?  
 9 A. Yes. I'm going to bill for it. It's a lot of  
 10 hours here.  
 11 Q. Sure. I understand. And you're going to bill  
 12 Mr. Jensen for it?  
 13 A. Yes.

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Witness\_ Nam Heui Kim - Vol. 1.txt: 148:18 - 149:7

18 BY MR. JENSEN:  
 19 Q. My first question, Doctor, is how much per hour  
 20 are you going to bill me for, please, ma'am?  
 21 A. Well, that's been a matter of debate. So I just  
 22 asked my boss what he charges and he said 500 an hour.  
 23 Q. Okay. So that will likely be the charge per  
 24 hour for your time spent away from your patients  
 25 reviewing your whole chart for Karen Bartlett?  
 00149  
 1 A. Yes.  
 2 Q. The defense attorney for Mutual just pointed out  
 3 that you didn't get the entire medical chart from me.  
 4 Representing to you that it was over 1500 pages, at  
 5 \$500 an hour would that have been something that you  
 6 would have reviewed the entire thing of? Would you  
 7 have even had time?

Objections: -402 -403	Ruling: Overruled.
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Witness\_ Nam Heui Kim - Vol. 1.txt: 149:9 - 149:18

## Bartlett v Mutual

9 THE WITNESS: I would not have  
 10 reviewed the entire record.  
 11 Q. (By Mr. Jensen) Would it -- of course the  
 12 defense attorney had the opportunity to provide you the  
 13 entire record today and so far they haven't, correct?  
 14 A. Correct.  
 15 Q. Okay. As of 2005, Dr. Kim, did you write down  
 16 every thought that entered your mind in your medical  
 17 records regarding the cause or etiology of a person's  
 18 TEN or other burn condition at Mass General?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained as to  
 lines 149:11 through  
 149:14. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 149:22 - 150:2

22 THE WITNESS: No.  
 23 Q. (By Mr. Jensen) Is your answer no?  
 24 A. No.  
 25 Q. Why did you not write down every thought that  
 00150  
 1 entered your head as to cause or etiology of a person's  
 2 TEN or other burn condition at Mass General?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained as to  
 lines 149:25 through  
 150:2.

Witness\_ Nam Heui Kim - Vol. 1.txt: 150:4 - 150:11

4 THE WITNESS: While I was at Mass  
 5 General -- it's really not important to my  
 6 care of the patient.  
 7 Q. (By Mr. Jensen) Would you also as a matter of  
 8 practice not write down things that were already  
 9 documented in the medical records such as the repeated  
 10 statement that NSAIDs or sulindac was the cause of  
 11 Karen Bartlett's TEN?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 150:14 - 150:17

14 THE WITNESS: I wouldn't be writing  
 15 down that information. I also don't write  
 16 down -- always write down treatment unless  
 17 it changes.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 151:2 - 151:11

2 Q. (By Mr. Jensen) Do you recall the questions you  
 3 were asked about a mechanism of action just a couple  
 4 minutes ago?  
 5 A. Yes.  
 6 Q. As of 2005, Dr. Kim, did you know of any  
 7 examples where doctors like yourself did not know what  
 8 the mechanism of action was between an agent and a  
 9 condition or between Condition A and Condition B but  
 10 still believed there was a causal relationship between  
 11 the two?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 151:15 - 151:20

15 THE WITNESS: Yeah.  
 16 Q. (By Mr. Jensen) In other words, in 2005 is it  
 17 correct to state that Dr. Kim knew that doctors didn't  
 18 need to know the cause of action to make sound medical  
 19 conclusions about causal relationships in certain  
 20 instances; is that fair?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

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Witness\_ Nam Heui Kim - Vol. 1.txt: 151:23 - 152:4

23 THE WITNESS: In certain instances,  
 24 yes.  
 25 Q. (By Mr. Jensen) Can you give us some examples  
 00152  
 1 that you would have known of in 2005 of when doctors  
 2 like yourself did not know the mechanism of action but  
 3 still believed there was a causal relationship between  
 4 the two?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 152:8 - 153:1

8 THE WITNESS: Well, ARDS. It's like  
 9 we don't always know the cause of ARDS.  
 10 Often it's infection or fluid overload, but  
 11 we still treat it the same way. Pneumonia  
 12 we just treat with antibiotics and hope we  
 13 get the right ones, broad spectrum, and  
 14 then tailor down if we get the information.  
 15 Q. (By Mr. Jensen) So you're telling us about you  
 16 don't know the mechanism of action between treatment  
 17 and cure, but you still believe there's a relationship,  
 18 a positive one between the two?  
 19 A. For --  
 20 Q. For ARDS and for pneumonia?  
 21 A. Well, sometimes the exact mechanism is unknown  
 22 but you treat it the same way, okay. And often it's  
 23 like if you delay treatment, for instance, in  
 24 infection, like a pneumonia, for waiting for the exact  
 25 mechanism, you have delayed for several days and the  
 00153  
 1 patient is doing worse for it.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -Foundation  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 153:11 - 153:12

Is -- does idiopathic or idiosyncratic mean you  
 12 do not know the cause?

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained.

Witness\_ Nam Heui Kim - Vol. 1.txt: 153:14 - 154:5

14 THE WITNESS: They actually mean two  
 15 different things, okay. Idiosyncratic  
 16 means that someone has a reaction that is  
 17 different than anyone else's reaction, and  
 18 idiopathic means it's an unknown cause.  
 19 Q. (By Mr. Jensen) So when you speak of an  
 20 idiopathic disease, that's not a cause for the disease.  
 21 That means doctors don't know the cause for the  
 22 disease, correct?  
 23 A. Yes.  
 24 Q. And is it correct to state that based upon your  
 25 care and treatment of Karen Bartlett, you knew of  
 00154  
 1 nothing that but for the events that led to her TEN,  
 2 taking sulindac specifically, would have made her  
 3 predisposed or more likely to get TEN than anyone else  
 4 in this room or in the world?  
 5 A. Yes. We just don't know.

Objections:  
 -402  
 -403  
 -611 (includes 611(c))  
 -702 (improper opinion from non-retained expert)

Ruling: Sustained as to  
 lines 153:14 through  
 153:23. Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 154:14 - 155:11

## Bartlett v Mutual

Is it correct to state that you knew  
 15 of nothing about Karen Bartlett's past medical history  
 16 or her medical and physical conditions which  
 17 predisposed her to getting TEN based upon your care and  
 18 treatment?

19 A. Yes.

20 Q. Yes, you did not know of any such things,  
 21 correct?

22 A. I did not -- I do not know of any such things.

23 Q. Okay. Do you recall the question you were asked  
 24 about whether you did an experiment to determine if  
 25 sulindac caused her TEN?

00155

1 A. Would I do an experiment?

2 Q. No. Do you recall being asked by Mutual's  
 3 attorney whether you did an experiment or not to  
 4 determine if sulindac caused Ms. Bartlett's TEN?

5 A. Yeah, something like that.

6 Q. In 2005, Dr. Kim, was there any experiment that  
 7 you knew of or that, to your knowledge, was known to  
 8 medicine other than a positive rechallenge that could  
 9 have been done to confirm your conclusion and Dr.  
 10 Ryan's conclusion that sulindac had caused Karen  
 11 Bartlett's TEN?

Objections:

-402

-403

-702 (improper opinion from non-retained  
 expert)

Ruling: Sustained as  
 to "and Dr. Ryan's  
 conclusion." Otherwise  
 overruled.

Witness\_ Nam Heui Kim - Vol. 1.txt: 155:14 - 156:2

14 THE WITNESS: I don't know of any way  
 15 to do that test except rechallenging  
 16 someone with the -- what is believed to be  
 17 the causative agent.

18 Q. (By Mr. Jensen) And a rechallenge, do you  
 19 agree, would mean reintroducing or giving her sulindac  
 20 again, which would be highly unethical to do?

21 A. Yes. It could potentially have very harmful  
 22 effects if it is the causative agent.

23 Q. So in short, as you knew it in 2005, there was  
 24 no test known to modern medicine other than that highly  
 25 unethical option to do what the defense attorney asked

00156

1 you about, to do an experiment to confirm causation,  
 2 correct?

Objections:

-611 (includes 611(c))

-Foundation

Ruling: Overruled.  
 Limiting instruction  
 restricting the  
 admissibility of  
 testimony to explaining  
 witness's treatment of  
 plaintiff may be  
 appropriate (Rule 105).

Witness\_ Nam Heui Kim - Vol. 1.txt: Page 156, Line 6

6 A. Yes.

Objections:

-611 (includes 611(c))

-Foundation

-Misrepresents prior testimony

Ruling: Overruled.